159-262

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 207.

THE NEW YORK, LAKE ERIE AND WESTERN RAILROAD COMPANY, PLAINTIFF IN ERROR,

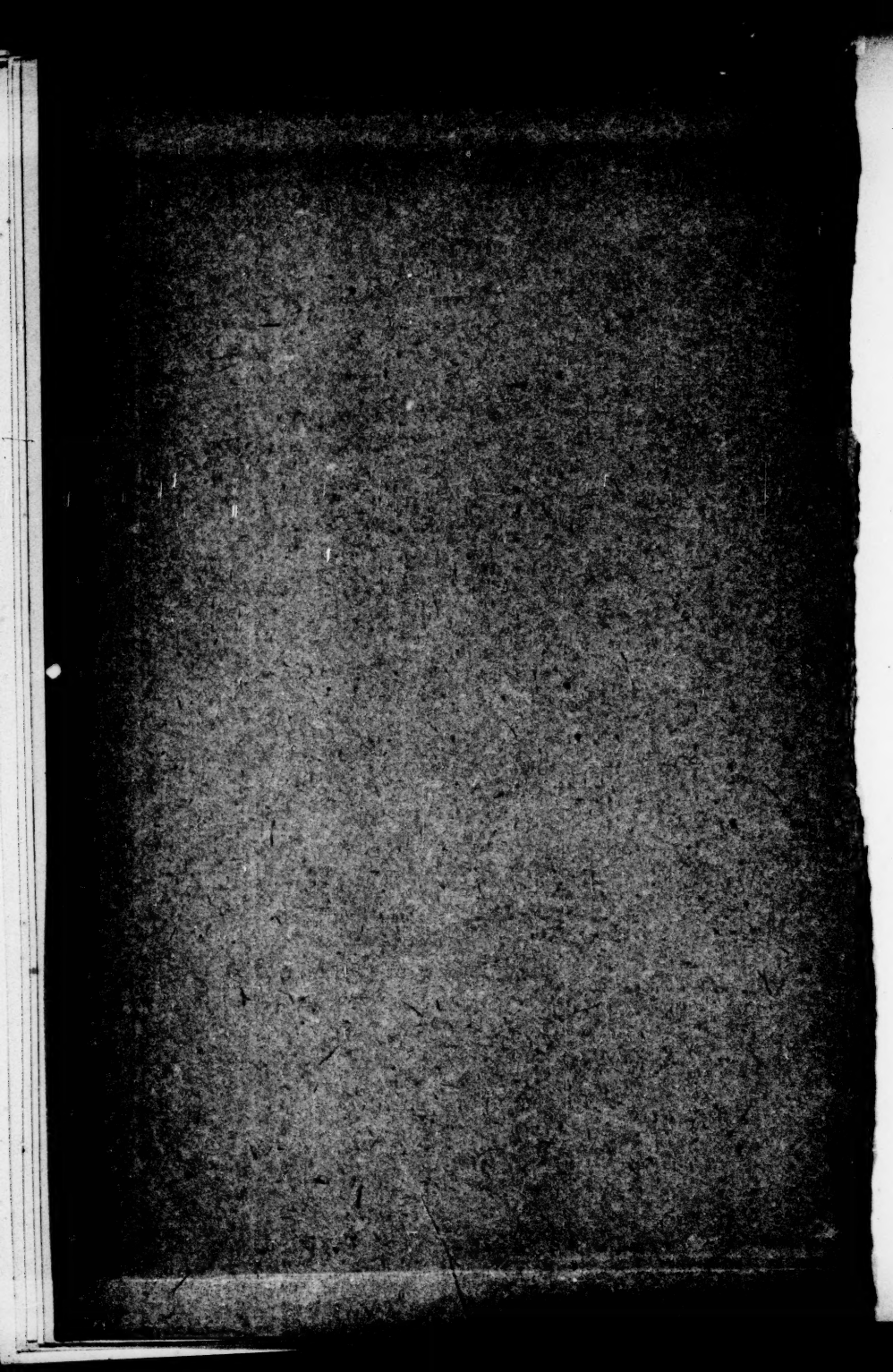
vs.

LAURA F. RUSH.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

FILED JULY 1, 1891.

(14,712.)



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1 UNITED STATES OF AMERICA, }
Northern District of Ohio. }

At a stated term of the circuit court of the United States within and for the northern district of Ohio, begun and held at the city of Cleveland, in said district, on the first Tuesday in April, being the seventh day of said month, in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the United States of America the one hundred and fifteenth—present, the Honorable Augustus J. Ricks, district judge—among the proceedings then and there had were the following, to wit:

LAURA F. RUSH
vs.
THE NEW YORK, LAKE ERIE AND WESTERN RAILROAD COMPANY *et al.* } Law. No. 4763.

Be it remembered that heretofore, to wit, on the 3rd day of February, A. D. 1890, there was filed in the clerk's office of said court a petition for removal; which petition is in the words and figures following, to wit:

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

LAURA F. RUSH
vs.
NEW YORK, PENNSYLVANIA AND OHIO Railroad Company, The New York, Lake Erie and Western Railroad Company, *et al.* } Petition for Removal.

To the honorable the judges of the circuit court of the United States for the northern district of Ohio:

2 Your petitioner, The New York, Lake Erie & Western Railroad Company, represents that the above-entitled suit was brought and begun against New York, Pennsylvania and Ohio Railroad Company and others in the court of common pleas of Mahoning county, Ohio, on the 12th day of November, 1888, and that on October 10, 1889, by leave of said court an amended petition was filed, naming your petitioner as an additional and new party defendant in said cause, and that on October 30, 1889, summons for your petitioner issued thereon and was served on your petitioner on October 31, 1889; that said suit was pending in said court until the 20th day of December, 1889, when said court made an order for the removal of the same to the circuit court of the United States for the northern district of Ohio, eastern division; that said suit has not been tried, and that in said suit there is a controversy between said plaintiff, Laura F. Rush, and your petitioner; that at the time when and ever since said suit was brought

and at the present time said plaintiff was and is a citizen and resident of the State of Ohio, and your petitioner, The New York, Lake Erie and Western Railroad Company, defendant, was and is a citizen of the State of New York and then was and now is a corporation organized, incorporated, and doing business under and by virtue of the laws of the State of New York; that the matter in dispute in said suit and in said controversy exceeds, exclusive of interest and costs, the sum of two thousand dollars ($2,000.00).

Your petitioner further says that from prejudice and from local influence your petitioner, said railroad company, will not be able to obtain justice in said court of common pleas or in any other State court to which it has a right, under the laws of the State of
3 Ohio, on account of such prejudice or local influence, to remove said cause, and your petitioner desires to remove said cause into said circuit court in pursuance of the acts of Congress in that behalf provided, to wit, the act approved March 3d, 1887, entitled "An act to amend the act of Congress approved March 3rd, 1875, entitled 'An act to determine the jurisdiction of circuit courts of the United States and regulate the removal of causes from State courts, and for other purposes,' and to further regulate the jurisdiction of circuit courts of the United States, and for other purposes," and the act approved August 13, 1888, entitled "An act to correct the enrollment of an act approved March 3d, 1887, entitled An act to amend sections one, two, three, and ten of an act to determine the jurisdiction of the circuit courts of the United States and to regulate the removal of causes from the State courts, and for other purposes, approved March 3d, 1875."

Your petitioner further says that it has filed the affidavit and petition required by the statute in such cases in said court of common pleas and offered to said court of common pleas its bond, duly executed, conditioned as by statute required, and that said bond has been accepted as good and sufficient according to the act of Congress, and said court has ordered that said suit be removed into the circuit court of the United States in and for the northern district of Ohio, eastern division, pursuant to the act of Congress in such cases made and provided, and your petitioner has entered in this court copies of the process against it and of all pleadings, depositions, testimony, and other proceedings in said cause, to which reference is hereby made.

Your petitioner therefore prays that said suit may be removed into said circuit court of the United States pursuant to the act
4 of Congress in such cases made and provided, and that no further proceedings may be had therein in the State court; and your petitioner will ever pray, &c.

THE NEW YORK, LAKE ERIE AND
WESTERN RAILROAD COMPANY,
By WILLIAMSON, BEACH & CUSHING,
Its Attorneys.

UNITED STATES OF AMERICA, } ss:
State of Ohio, Cuyahoga County, }

I, A. M. Tucker, being first duly sworn, do say that I am general superintendent of the New York, Lake Erie & Western Railroad Company, having in charge the New York, Pennsylvania and Ohio railroad, and that said railroad company is one of the defendants in the above-entitled cause, and that I have control of the litigation involved in said cause and am authorized to make this affidavit, and that I have read the foregoing petition and know the contents thereof, and the statements and allegations therein contained are true as I verily believe.

And I further say that from prejudice and from local influence said New York, Lake Erie & Western Railroad Company will not be able to obtain justice in said court of common pleas or in any other State court to which it has a right, under the laws of the State of Ohio, on account of such prejudice and local influence, to remove said cause.

A. M. TUCKER.

Subscribed to by said A. M. Tucker in my presence and by him sworn to before me this 17 day of January, A. D. 1890.

WM. E. TALCOTT,
Notary Public. [SEAL.]

5 And afterwards, to wit, on the 3rd day of February, A. D. 1890, an order was entered in said cause; which order is in the words and figures following, to wit:

LAURE F. RUSH
vs.
THE N. Y., L. E. & W. R. R. Co. } Law. No. 4763.

This day came on to be heard the petition of the defendant for an order for removal of this cause from the court of common pleas of Mahoning county, O.; and, it appearing to the court from the statements in said petition that the defendants *have* filed in said court of common pleas its bond, affidavit, and petition, as required by the 2nd section of the act of Congress of March 3rd, A. D. 1887, entitled "An act to determine the jurisdiction of circuit courts of the United States and to regulate the removal of causes from State courts, and for other purposes," &c., and by the 2nd section of the act of Congress approved August 13, 1888, entitled "An act to correct the enrollment of an act approved March 3rd, 1887, entitled 'An act to amend sections one, two, three and ten of "An act to determine the jurisdiction of circuit courts of the United States and to regulate the removal of causes from the State courts, and for other purposes," approved March 3rd, 1875;'" and it further appearing that said court of common pleas has accepted said bond and ordered said cause to be removed to this court, it is now ordered, upon the motion and petition of said defendant, that said cause be docketed in this court for such further proceedings as are authorized by law.

6 And afterwards, to wit, on the 3rd day of February, A. D. 1890, a transcript was filed in said cause; which transcript is in the words and figures following, to wit:

Docket Entries.

Appearance Docket No. 14, Court of Common Pleas, Mahoning County, Ohio, page 15402.

LAURA F. RUSH
vs.
THE NEW YORK, PENNSYLVANIA AND OHIO RAILROAD COMPANY and The Cleveland and Mahoning Valley Railway Company, The New York, Lake Erie and Western Railroad Company.

Civil action—money only.

Sanderson & Norris and Hine & Clarke and Russell & Rice.

Term.	Date.	
1888. Sept.	Nov. 12	Petition and precipe filed. Summons issued. Petition endorsed: I hereby bind myself for costs herein. Nov. 12, 1888. D. B. Stambaugh.
1888.	Nov. 26	Summons returned and filed. Endorsed: Received this writ November 15th, A. D. 1888, 9 o'clock a. m., and, pursuant to its command, I did, on the 22nd day of November, 1888, serve this writ on the within-named New York, Pennsylvania and Ohio Railroad Company by delivering a true and certified copy thereof to E. R. Perkins, treasurer of said R. R. Co., no higher officer found in my county; also on the 24th day of November, 1888, I served this writ on the within-named The Cleveland and Mahoning Valley Railway Company by delivering a true and certified copy thereof to E. E. Poppleton, secretary for said C. & M. — R'y Co., no higher officer of said R. R. Co. found in said county. E. D. Sawyer, sheriff, by W. R. Ryan, dep. Fees, $1.92.
7 Sept.	Dec. 15	Answer filed & con.

Term.	Date.	
'89.		
Jan'y	Jan. 15	Demurrer to second defense of answer filed.
"	Feb'y 2	Hearing on demurrer to answer sustained. Def'ts except. J. 36, p. 98.
"	Feb'y 8	Amended petition filed.
	Feb'y 9	Leave to pl'ff to file amended petition instanter, which is done. J. 36, p. 116.
	M'ch 21	Demurrer of N. Y., P. & O. R. R. Co. to amended petition filed.
"	"	Demurrer of C. & M. V. R'y Co. to amended petition filed.
May	June 14	Hearing on demurrer to petition overruled. Def'ts except, and have leave to answer by Aug. 1, '89. J. 37, p. 144.
"	" 29	Joint answer of def'ts filed.
Sept.	Oct. 10	Second amended petition filed.
"	"	Leave to pl'ff to file 2nd amended petition, making the N. Y., L. E. & W. R. R. Co. defendant. Def'ts N. Y., P. & O. R. R. Co. and C. & M. V. R. R. Co. except. J. 38, p. 98.
"	" 30	Summons issued on precipe filed with 2nd amended petition, filed Oct. 10, '89.
8		
"	Nov. 11	Summons ret'd and filed. Endorsed: Received this writ Oct. 31st, A. D. 1889, and, pursuant to its command, on the 31st day of Oct., A. D. 1889, I notified the within-named def't, The New York, Lake Erie and Western Railroad Company, by delivering to B. P. Holmes, a regular ticket agent of said company, a true and certified copy thereof, with indorsements thereon, after having failed to find the pres., vice-pres't, sec'y, treas., chairman of board of directors, or any other chief officer of the within-named company. S. O. Ewing, sheriff, by R. M. Hilands, deputy. Fees, $1.80.
Sept.	Nov. 30	Motion to dismiss filed.
"	Dec. 4	Answer of N. Y., P. & O. R. R. Co. filed.
"	"	Answer of C. & M. V. R'y Co. filed.
	Dec. 14	Petition & affidavit for removal to U. S. circuit court filed.
"	"	Bond filed.
"	"	Order of removal to circuit court U. S. Pl'ff excepts. J. 3, p. 287.

9 *Journal Entries.*

J. 36, p. 98, Jan. Term, Feb'y 2, '89.

LAURA F. RUSH
vs.
N. Y., P. & O. R. R. Co. *et al.* } 551. 15402. C. A.

This cause came on for hearing on demurrer to answer herein, which being heard and understood by the court, the same is sustained; to which the defendant excepts.

J. 36, p. 116, Jan. Term, Feb. 9, '89.

LAURA F. RUSH
vs.
N. Y., P. & O. R. R. Co. *et al.* } 551. 15402. C. A.

Leave is granted plaintiff to file amended petition herein instanter, which is done.

J. 37, p. 144, May Term, June 14, '89.

LAURA F. RUSH
vs.
N. Y., P. & O. R. R. Co. *et al.* } 385. 15402. C. A.

This cause came on for hearing on demurrer to petition herein, which demurrer being heard and understood by the court, the same is overruled; to which the defendants except, and have leave to answer herein by August 1st, 1889.

10 J. 38, p. 98, Sept. Term, Oct. 10, '89.

LAURA F. RUSH
vs.
N. Y., P. & O. R. R. Co. *et al.* } 275. 15402. C. A.

Leave is granted plaintiff to file 2nd amended petition herein, making The New York, Lake Erie & Western R. R. Co. defendant, instanter; to all of which the defendants The New York, Penna. & Ohio R. R. Co. and The C. & M. V. R. R. Co. except.

Sept. Term, J. 38, p. 287, Dec. 20, '89.

LAURA F. RUSH
vs.
N. Y., P. & O. R. R. Co. *et al.* } 275. 15402. C. A.

The defendant The New York, Lake Erie and Western Railroad Company having filed on the 14th day of December, 1889, its petition for the removal of this case to the circuit court of the United States for the northern district of Ohio, and having filed on the

same day a bond, with good and sufficient security, pursuant to statute, which bond is hereby approved:

Thereupon the court, finding that the said defendant is a citizen and resident of the State of New York, and that the plaintiff is a citizen and resident of the State of Ohio, and that defendant is entitled to such removal, do hereby accept said petition and bond, and order that said cause be removed for trial into the next circuit court of the United States for the northern district of Ohio, eastern division, pursuant to the statutes of the United States,
11 and all further proceedings in this court in said case are hereby stayed, unless said case be remanded to this court for trial and determination herein; to all of which said plaintiff excepts.

12 THE STATE OF OHIO, } *ss:*
Mahoning County, }

In the Court of Common Pleas of said County.

LAURA F. RUSH
vs.
NEW YORK, PENNSYLVANIA AND OHIO RAILROAD COMPANY and The Cleveland and Mahoning Valley Railway Company. } Petition.

The plaintiff says that on the 30th day of August, 1886, the defendant New York, Pennsylvania and Ohio Railroad Company was, ever since has been, and now is a duly created, organized, and existing railroad corporation under the laws of New York, Pennsylvania, and Ohio; that the defendant The Cleveland and Mahoning Valley Railway Company on said day was, ever since has been, and now is a duly created and existing railway corporation of the State of Ohio; that at said time the last-named company was, ever since has been, and now is the owner of a line of railroad extending from the city of Cleveland, Ohio, to the city of Youngstown, Mahoning county, Ohio, through the village of Girard, in Trumbull county, Ohio, and that said line of railroad so owned by the latter company on said day —, ever since has been, and now is in the possession, use, and control and operated by the former company under a written lease made and delivered by the latter to the former, the date, terms, and provisions of which plaintiff is unable to set forth.

That on said 30th day of August, 1886, the defendants, by
13 their servants, employés, and laborers, constructed and excavated a ditch or drain on their right of way and lands where the same are crossed by Liberty street, in said village of Girard, Trumbull county, Ohio, and by the southeastern sidewalk of said street, and in and about such construction and excavation of said ditch or drain across the said southeast sidewalk of said street the defendant tore up and removed a large space of such sidewalk, to wit, about six feet in length, the entire width of said sidewalk, and constructed said drain or ditch across the same to a depth of about six feet; that in order to prevent the sides thereof from falling into the same

they placed large timbers along the northerly side of said drain, ditch, or excavation and within the same, extending below the natural or dormer surface of the sidewalk, which they tore up and removed from such northerly side of said drain, ditch, or excavation; and so that the same was rendered unsafe and dangerous to persons passing on and along said sidewalk, who did not know or have the means of knowing that said sidewalk had been so taken up and removed and said drain or ditch so excavated across the place which had previously been occupied by said sidewalk.

That on the night of said 30th day of August, 1886, when darkness set in, the defendants carelessly and negligently omitted to place any signal of any kind or place any person to warn persons passing on and along said sidewalk of said removal of such portion thereof or of the fact that such deep and dangerous excavation had been made across the same; they negligently and carelessly omitted to place any barrier or to adopt any other means of any kind to prevent persons who might be passing on and along said
14 sidewalk from falling into such deep and dangerous excavation and being injured; and, on the contrary, they left the same unguarded in any manner whatever, with no signals at or near the same, whereby persons might have been warned in time to avoid the same, and so permitted the same to remain in such dangerous condition long into said night, when, by reason of the darkness of the night, such excavation could not be seen by persons who might be passing along said sidewalk, and until after the plaintiff became injured thereby, as hereinafter stated.

That on the evening of the day last aforesaid the plaintiff, after darkness had set in, was passing on and along said southeast sidewalk of said street in the direction of her home, in said village of Girard, and while in the exercise of proper care on her part, but having no knowledge whatever that said sidewalk had been removed or said excavation made across the same nor having any means of ascertaining the same, owing to the darkness of the night and her inability to see the same, she fell into said excavation, drain, or ditch and to the bottom thereof, struck her breast violently against said logs or timbers which had been placed thereon, and by such fall in the manner aforesaid she was rendered insensible and lay in said ditch until some persons passing along said street, attracted by her groaning to the spot where she lay helpless, removed her therefrom.

That by such fall into said excavation in the manner aforesaid the plaintiff was greatly hurt, wounded, and injured; her face and nose was bruised and the skin abraded and torn; her breast in striking against said logs or timbers was bruised and injured, and she sustained internal injuries by reason of the violence of
15 the fall and the shock thereof, so that she became ill and so remained to the present time; that as a natural and necessary result of said injuries to her breast there has grown a large and dangerous tumor or cancerous growth on and attached at the place of said hurt, bruise, and injury to her breast. The said tumor or cancerous growth has caused her great pain and suffering; has

caused her great anguish of body and mind; the same, together with the other injuries and shock she received, have impaired her health permanently and permanently impaired her nervous system. The said injuries and said natural results thereof, she avers, will greatly shorten her life and will be the direct cause of her death; the same have rendered her unable to perform her ordinary work and duties and have disabled and prevented her from pursuing her ordinary vocation in life.

The plaintiff at the time she sustained said injuries was twenty-five years old; she was in good health and free from all diseases; she has since receiving said injuries expended large sums of money in and about necessary medical and surgical treatment, medicines, and nursing and endeavoring to be cured.

Wherefore the plaintiff says that she was injured as aforesaid in the manner aforesaid by reason of said gross carelessness and negligence of thedefendants in the manner aforesaid and without any carelessness or negligence on her part.

That by reason of said injuries so as aforesaid sustained she has been damaged in the sum of twenty-five thousand dollars, for which she demands judgment herein against said defendants.

SANDERSON AND NORRIS,
Att'ys for Plaintiff.

16 THE STATE OF OHIO, }
Mahoning County. }

The above-named Laura F. Rush, being sworn, says that she believes the facts stated and contained in the foregoing petition to be true.

LAURA F. RUSH.

Sworn to and subscribed by the above-named Laura F. Rush before me this 8th day of November, 1888.

THOS. W. SANDERSON,
Master Commissioner of Mahoning County, Ohio.

LAURA F. RUSH
vs.
NEW YORK, PENNSYLVANIA AND OHIO RAILROAD COMPANY and THE CLEVELAND AND MAHONING VALLEY RAILWAY COMPANY.

Issue summons herein to sheriff of Cuyahoga county, Ohio, for said defendants, returnable according to law. Endorse, "Amount claimed $25,000.00."

SANDERSON AND NORRIS,
Attorneys for Plaintiff.

To Z. P. Curry, Esq., clerk of said court.

I hereby bind myself for costs herein.
November 12th, 1888.

D. B. STAMBAUGH.

17 THE STATE OF OHIO, } ss:
Mahoning County, }

To the sheriff of Cuyahoga county:

You are commanded to notify New York, Pennsylvania & Ohio Railroad Company and The Cleveland and Mahoning Valley Railway Company that they have been sued by Laura F. Rush in the court of common pleas of Mahoning county, and that unless they answer by the 15th day of December, A. D. 1888, the petition of the said plaintiff against them filed in the clerk's office of said court such petition will be taken as true and judgment rendered accordingly.

You will make due return of this summons on the 26th day of November, A. D. 1888.

Witness Z. P. Curry, clerk of said court, and the seal thereof, at Youngstown, this 12th day of November, A. D. 1888.

[SEAL.] Z. P. CURRY, *Clerk,*
By A. O. FORDING,
Deputy Clerk.

[Endorsed:] No. 15402. Mahoning common pleas. Laura F. Rush, plaintiff, against N. Y., P. & O. R. R. Co. *et al.*, defendants. Summons. Amount claimed, $25,000.00, with interest from ——. Returnable Nov. 26, 1888. Returned and filed Nov. 26. Z. P. Curry, clerk. Sanderson & Norris, plaintiff's attorneys.

Sheriff's Return.

THE STATE OF OHIO, } ss:
Cuyahoga County, }

Received this writ November 15th, A. D. 1888, 9 o'clock a. m., and, pursuant to its command, I did on the 22nd day of November, 1888, serve this writ on the within-named New York, Pennsylvania and Ohio Railroad Company by delivering a true and certified copy thereof to E. R. Perkins, treasurer of said R. R. Co.; no higher officer found in my county.

Also on the 24th day of November, 1888, I served this writ on the within-named The Cleveland and Mahoning Valley Railway Company by delivering a true and certified copy thereof to E. E. Poppleton, secretary for said C. C. & M. — R'y Co.; no higher officer of said R. R. Co. found in said county.

E. D. SAWYER, *Sheriff,*
By W. R. RYAN, *Dep.*

Sheriff's Fees.

Service & return	$ 45
Mileage	80
Cop	40
Record	04
Postage	10
Docket	10
Total	$1 97

18 STATE OF OHIO, }
Mahoning County, }

In the Court of Common Pleas.

LAURA F. RUSH, Plaintiff,
vs.
THE NEW YORK, PENNSYLVANIA AND OHIO RAILROAD Company and The Cleveland and Mahoning Valley Railway Company, Defendants. } Answer.

Now come the above-named defendants, and for their joint answer to petition of plaintiff say:

First defense.—They admit the due creation, organization, and existence of each of said defendants as a railroad corporation of the State of Ohio.

They admit that the defendant The Cleveland and Mahoning Valley Railway Company is the owner of the railroad and premises referred to in the petition.

They admit that the defendant The New York, Pennsylvania and Ohio Railroad Company is the lessee of the said railroad property and premises of the said defendant, The Cleveland and Mahoning Valley Railway Company, and went into the possession of the said premises as such lessee; the last time that it took possession of said premises, under lease dated May 4th, 1880, though long before the cause of action, if any there be, arose in regard to the matter set forth in plaintiff's petition, to wit, April 30th, 1883, it duly surrendered the possession and control of said railroad property
19 and premises to its lessee thereof, The New York, Lake Erie and Western Railroad Company.

Save as herein specifically admitted these defendants deny each and every allegation in the said petition contained.

Second defense.—As a second and separate defense to the cause of action alleged against them in the plaintiff's petition these defendants say that at the time of the occurrences alleged against them in the petition and ever since April 30th, 1883, The New York, Lake Erie and Western Railroad Company, a duly created, organized, and existing corporation of the State of New York, under a lease duly made, executed, and delivered to it by the defendant The New York, Pennsylvania and Ohio Railroad Company, had been and was in the lawful, sole, and exclusive possession and control of the said railroad property and premises, and was, at the time of the accident complained of in the petition, engaged lawfully in the operation, sole and exclusive possession and control of said railroad property and premises as an independent contractor in relation thereto, and any liability to the plaintiff, if any there be, by reason of the matters set forth in the petition is the sole liability of the said N. Y., L. E. & W. R. R. Co.

That by reason of the premises and the fact that the said N. Y., L. E. & W. R. R. Co. is not made a party defendant to this action the defendants named are in no way liable to the plaintiff by rea-

son of any matters and things set forth in her petition, and pray to be dismissed hence with their costs.

RUSSELL & RICE AND
HINE & CLARKE,
Attorneys for Defendants.

20 STATE OF OHIO, }
Cuyahoga County. }

L. A. Russell, being sworn, says that he is one of the attorneys for the defendants in this action, which are railroad corporations of the State of Ohio, and as such is duly authorized to make the affidavit in this case.

That the facts stated and allegations made in the foregoing answer are true as he verily believes.

L. A. RUSSELL.

Sworn to before me and subscribed in my presence by the said L. A. Russell this 5th day of December, A. D. 1889.

[SEAL.] FRED. H. BIERMANN,
Notary Public.

21 THE STATE OF OHIO, }
Mahoning County, }

In the Court of Common Pleas.

LAURA F. RUSH
vs.
THE NEW YORK, PENNSYLVANIA & OHIO RAILROAD COMPANY *et al.* } Demurrer to Answer.

The plaintiff now comes and demurs to the second defense of the answer of defendants herein, and for cause says the said second defense of said answer does not state facts sufficient to constitute a defense to said action.

Jan'y 15th, 1889.

SANDERSON & NORRIS,
Attorneys for Plaintiff.

22 THE STATE OF OHIO, }
Mahoning County. }

In the Court of Common Pleas.

LAURA F. RUSH
vs.
NEW YORK, PENNSYLVANIA AND OHIO RAILROAD COMPANY and CLEVELAND and MAHONING VALLEY RAILWAY COMPANY. } Amended Petition.

The plaintiff, by leave of the court first had, for amended petition herein says that on the 30th day of August, 1886, the defendant New York, Pennsylvania and Ohio Railroad Company was, ever since has been, and now is a duly created, organized, and existing rail-

road corporation under the laws of New York, Pennsylvania, and Ohio; that the defendant Cleveland and Mahoning Valley Railway Company on said day was, ever since has been, and now is a duly created and existing railway corporation of the State of Ohio, and at said time was, ever since has been, and now is the owner of a line of railroad and equipment extending from the city of Cleveland, Ohio, through the village of Girard, Trumbull county, to and beyond the city of Youngstown, Mahoning county, Ohio; that at the date aforesaid said line of railroad, together with its equipment, so owned by said last-named company, on said day was, ever since has been, and now is in the possession, use, and control of said first-named company under a written lease made, executed, and delivered by the latter to the former company, the date and particular terms and provisions of which the plaintiff is unable to state; that
23 on the said 30th day of August, 1886, the New York, Lake Erie and Western Railroad Company, a railroad corporation created and existing under the laws of the State of New York and being a corporation of a State other than the State of Ohio, held, used, occupied, and operated said line of railroad — equipment of said Cleveland and Mahoning Valley Railway Company by virtue of a lease or some instrument in writing or assignment made, executed, and delivered by the said New York, Pennsylvania and Ohio Railroad Company to it, made, executed, and delivered as aforesaid on the 30th day of April, 1883, the particular terms and provisions of which are unknown to plaintiff, and she is for that reason unable to state the same; that on said 30th day of August, 1886, the defendants, by their officers, employés, and laborers and by the employés and servants of said New York, Lake Erie and Western Railroad Company, in and about the maintenance and operation of said line of railroad, entered upon the right of way and lands of said Cleveland and Mahoning Valley Railway Company in the village of Girard, Trumbull county, Ohio, where the said right of way and lands are crossed by Liberty street, a public street and thoroughfare of said village, having a public sidewalk on both sides thereof; took up and removed about six feet in length of the sidewalk on and along the southerly or southeasterly side of said street; dug, excavated, and constructed a ditch or drain about six feet in length, three feet in width at the top, and four feet deep in said street, extending across the place therein from which said sidewalk had been as aforesaid taken up and removed; placed in said excavation,
24 along the sides thereof, heavy timbers to prevent the sides of said excavation from falling inward; negligently and carelessly left said excavation in the condition aforesaid into and during the night of said day and carelessly and negligently left the same unguarded and without any light, signal, or barrier to warn or notify persons who might be or were using or passing along said street or sidewalk of the existence, condition, or danger of said excavation or removal of such sidewalk or to prevent them from falling into said excavation.

That on the evening of said day the plaintiff, having no notice or knowledge of said excavation, its dangerous condition, or of the

negligence aforesaid, after darkness had set in, in the exercise of proper care on her part, was passing on foot and along said southerly sidewalk of said Liberty street in the direction of her home, in said village of Girard; with no means of seeing, owing to the darkness, or of being advised that said excavation had been extended across where said sidewalk had heretofore been and left open and wholly ungarded as aforesaid, she fell violently into said excavation to the bottom thereof; struck her breast with great force against said timbers which had been placed therein as aforesaid; that by reason of such fall in the manner aforesaid she was rendered insensible, and laid in said ditch until rescued by some persons who came to her aid.

That by reason of such fall into said ditch or excavation in the manner aforesaid the plaintiff was severely hurt, wounded,
25 and injured. Her face was bruised, and the skin thereof abraded and torn. Her breast in striking against said timbers was bruised, contused, and injured. She sustained a severe nervous shock, nervous injuries, and other internal injuries.

That as a natural and necessary result of the said injuries to her breast there has grown and been produced a large and dangerous tumor or cancerous growth on and attached to the place of said hurt, bruise, or injury to her breast, which since the time of said injuries has continued to grow and enlarge. The said injuries, especially the said tumorous or cancer growth, have caused her great pain and suffering of both mind and body. Her health has been continuously and permanently impaired thereby. She has continuously been prevented by reason thereof from performing her usual duties and vocation in life. At the time she was injured as aforesaid she was twenty-five years old; was then and still is unmarried, and was in the enjoyment of good health. She has, since — received said injuries, expended large sums of money in and about necessary nursing and medical and surgical treatment.

Wherefore the plaintiff says that she was injured as aforesaid in the manner aforesaid by reason of the gross negligence of defendant as aforesaid in the manner aforesaid and without any fault or negligence on her part.

That by reason of such injuries she has sustained damages in the sum of twenty-five thousand dollars, for which she demands judgment herein against the defendants.

SANDERSON & NORRIS,
Attorneys for Plaintiff.

26 THE STATE OF OHIO, }
Mahoning County. }

T. W. Sanderson, being sworn, says that he is one of the plaintiff's attorneys herein; that the plaintiff is a non-resident of and absent from said county, and that he believes the facts stated in the foregoing petition to be true.

THOS. W. SANDERSON.

Sworn to and subscribed by said T. W. Sanderson before me this 6th day of February, 1889.

P. H. BURNETT,
Notary Public.

[SEAL.]

27 THE STATE OF OHIO, } ss:
Mahoning County, }

In the Court of Common Pleas.

LAURA F. RUSH, Plaintiff,
vs.
THE NEW YORK, PENNSYLVANIA AND Ohio Railroad Company and The Cleveland and Mahoning Valley Railway Company, Defendant-.

Demurrer of the New York, Pennsylvania and Ohio Railroad Company to Amended Petition.

The defendant The New York, Pennsylvania and Ohio Railroad Company now comes and demurs to the amended petition filed by the plaintiff in this case for the reason that the same does not state facts sufficient to constitute a cause of action against this defendant.

RUSSEL & RICE AND
HINE & CLARKE,
Att'ys for the N. Y., P. & O. R. R. Co.

28 THE STATE OF OHIO, } ss:
Mahoning County, }

In the Court of Common Pleas.

LAURA F. RUSH, Plaintiff,
vs.
THE NEW YORK, PENNSYLVANIA AND Ohio Railroad Company and The Cleveland and Mahoning Valley Railway Company, Defendants.

Demurrer of the Cleveland and Mahoning Valley Railway Company to Amended Petition.

The defendant The Cleveland and Mahoning Valley Railway Company now comes and demurs to the amended petition filed by the plaintiff in this case for the reason that the same does not state facts sufficient to constitute a cause of action against this defendant.

RUSSEL & RICE &
HINE & CLARKE,
Att'ys for the C. & M. V. R. Co.

29 THE STATE OF OHIO, }
Mahoning County. }

In Court of Common Pleas.

LAURA F. RUSH, Plaintiff,
vs.
THE NEW YORK, PENNSYLVANIA AND OHIO RAILroad Company and The Cleveland and Mahoning Valley Railway Company, Defendant-. } Joint Answer.

Now come the said defendants and, for their joint answer to the amended petition of plaintiffs filed herein, say they admit the corporate creation, organization, and existence of each of them as in the petition alleged and the ownership of the line of railroad alleged in the petition by the defendant The Cleveland and Mahoning Valley Railway Company.

They admit that on August 30th, 1886, said railroad was held, occupied, and operated by the New York, Lake Erie and Western Railroad Company, a railroad corporation of the State of New York, under a lawful lease of said property from the defendant The New York, Pennsylvania and Ohio Railroad Company, duly made and executed April 30th, 1883.

They deny each and every allegation in said amended petition contained not hereinbefore specifically admitted.

Further answering, these defendants say that long prior to April 13th, 1883, the defendant The Cleveland and Mahoning
30 Valley Railway Company had duly let and leased its said railroad line, property, and the equipment thereof to the defendant The New York, Pennsylvania and Ohio Railroad Company, which was then in lawful possession thereof under said lease and was operating the same and had sole care thereof.

That on April 30th, 1883, said last-named defendant duly and lawfully let and leased the said railroad line, property, and equipment to the said New York, Lake Erie and Western Railroad Company, a railroad corporation of New York, which thereupon entered into possession thereof under said lease and has ever since been and now is in the lawful, sole, and exclusive possession, occupancy, and control of the said railroad line, property, premises, and equipment and in the operation thereof under said lease and control-ing, managing, occupying, and operating the same by itself and its own officers, agents, and employés alone and over whom these defendants have no authority nor control whatever.

These defendants, further answering, say if the plaintiff received any injury at the time by her complained of she received the same not upon the highway, but upon the private premises of said railroad property, where she was at the time a trespasser; that any injury she received, if she did receive any, she received solely in consequence of her own negligence, which contributed proximately and directly thereto as the cause thereof.

Wherefore these defendants pray to be dismissed hence with their costs.

THE CLEVELAND AND MAHONING VALLEY RAILWAY COMPANY, AND
THE NEW YORK, PENNSYLVANIA AND OHIO RAILROAD COMPANY,
By RUSSELL & RICE &
HINE & CLARKE, *Their Attorneys.*

31 THE STATE OF OHIO, }
Cuyahoga County. }

L. A. Russell, being sworn, says he is one of the attorneys of the defendants whose answer is above written; that they are railroad corporations of Ohio and he is duly authorized in the premises; that the facts stated and allegations made in the foregoing answer are true as he verily believes.

L. A. RUSSELL.

Sworn to before me by the said L. A. Russell and by him subscribed in my presence this 28th day of June, A. D. 1889.

C. A. BEJECK,
[SEAL.] *Notary Public.*

32 THE STATE OF OHIO, }
Mahoning County. }

In the Court of Common Pleas.

LAURA F. RUSH
vs.
THE NEW YORK, PENNSYLVANIA AND OHIO Railroad Company and The Cleveland and Mahoning Valley Railway Company and New York, Lake Erie and Western Railroad Company. } Second Amended Petition.

The plaintiff, by leave of the court first had, for second amended petition herein says that on the 30th day of August, 1886, the defendant New York, Pennsylvania and Ohio Railroad Company was, ever since has been, and now is a duly created, organized, and existing railroad corporation under the laws of New York, Pennsylvania, and Ohio; that the defendant Cleveland and Mahoning Valley Railway Company on said day was, ever since has been, and now is a duly created and existing railway corporation of the State of Ohio, and that the defendant New York, Lake Erie and Western Railroad Company at said time was, ever since has been, and now is a duly created and existing railroad corporation under the laws of the State of New York; that said Cleveland and Mahoning Valley Railway Company at said time —, ever since —, and now is the owner of a line of railroad, equipment, and appliances extending

from the city of Cleveland, Ohio, through the village of
33 Girard, Trumbull county, Ohio, to and beyond the city of
Youngstown, Mahoning county, Ohio; that at the date aforesaid said line of railroad, together with such equipment and appliance-, was, ever since has been, and now is in the possession, use, and control of said New York, Lake Erie and Western Railroad Company under and by virtue of a written lease or instrument of writing duly executed and delivered by said Cleveland and Mahoning Valley Railway Company to said New York, Pennsylvania and Ohio Railroad Company, the date and particular terms and provisions of which the plaintiff is unable to state; that said lease or instrument of writing was transferred or assigned in some manner by said New York, Pennsylvania and Ohio Railroad Company to said New York, Lake Erie and Western Railroad Company, by which the latter company came into the possession, occupancy, use, and control of the said line of railroad, and on said 30th day of August, 1886, the latter company was operating the said line of railroad for the purpose of transportation of passengers and freight over the same under and by virtue of said lease or instrument of writing or other lease or instrument of writing, the terms, conditions, and provisions of which the plaintiff is unable to state.

That on said 30th day of August, 1886, the defendants, by their officers, employés, and laborers, in and about the maintenance and operation of said line of railroad, entered upon the right of way and lands of said Cleveland and Mahoning Valley Railway Company in the village of Girard, Trumbull county, Ohio, where the
right of way and lands are crossed by Liberty street, a public
34 street and thoroughfare of said village of Girard, having a
public sidewalk on both sides thereof; took up and removed about six feet in length of said sidewalk, extending on and along the southerly or southeasterly side of said street; dug, excavated, and constructed a ditch, excavation, or drain about six feet in length, three feet in width at the top, and four feet deep in said street, extending across the place therein from which said sidewalk had been as aforesaid taken up and removed; placed in said ditch or excavation, along the sides thereof, heavy timbers to prevent the sides of said excavation or drain from falling inward; negligently and carelessly left said excavation in the condition aforesaid, wholly uncovered, in and during the night of said day, and carelessly and negligently left the same unguarded and without any light, signal, or barrier, or bridge or way over the same to warn or notify persons who might be or were using or passing along said street or sidewalk of the existence of the same or its condition or the danger of said excavation or removal of such sidewalk, or to enable the same to be crossed or used without falling into said excavation or drain and thereby become injured.

That on the evening of said day the plaintiff, having no notice or knowledge of said excavation or the construction of said drain, its dangerous condition, or the negligence of the defendants aforesaid, after darkness had set in, in the exercise of due care on her part, was passing on and along said southerly or southeasterly sidewalk

on said Liberty street, in the direction of her home, in the
35 said village of Girard, with no means of seeing, owing to the darkness, or being advised that said excavation had been extended across where said sidewalk had theretofore been left wholly unguarded as aforesaid, she fell into said excavation or ditch, against said timbers which had been placed therein as aforesaid, and by reason of such fall, in the manner aforesaid, she was stunned and rendered insensible, and laid in said ditch until rescued by some persons who came to her aid.

That by reason of said fall into said ditch or excavation in the manner aforesaid the plaintiff was severely hurt, wounded, and injured; her face was bruised and the skin thereof injured and torn; her breast in striking against said timbers was bruised, contused, and injured; she sustained a severe nervous shock, nervous injuries, and other internal injuries; that as the natural and necessary result of said injuries to her breast there has grown and been produced a large and dangerous tumor or cancerous growth on or attached to the place of said hurt, bruise, or injury to her breast, which since the time of said injury has continued to grow and enlarge. The said injuries, especially the said tumor or cancerous growth, have caused her great pain and suffering of both body and mind; her health has been continuously and permanently injured thereby; she has been prevented by reason thereof from performing her usual duties and pursuing her vocation in life. At the time she was injured aforesaid she was 25 years old, and was then and still is unmarried, and was in the enjoyment of good health. She has since receiving said injuries spent large sums of money in and about nursing and medical treatment, and she avers that the natural
36 and necessary result of said injury to her breast is permanent and incurable, and that she must necessarily be subjected to pain and suffering therefrom during her lifetime.

Wherefore the plaintiff says that she was injured as aforesaid, in the manner aforesaid, by reason of the gross negligence and carelessness of defendants, as aforesaid, in and about such digging of said excavation, ditch, or drain across said sidewalk, by reason of leaving the same wholly unguarded and without providing any signals by which persons passing along said street should be warned of the danger thereof, and by reason of leaving the same entirely uncovered and providing no means for passage across the same, as hereinbefore set forth; that the plaintiff was in no way negligent or did she in any manner contribute to the injuries aforesaid.

That by reason of said injuries she has sustained damages in the sum of twenty-five thousand dollars ($25,000.00), for which she demands judgment herein against defendants.

SANDERSON AND NORRIS,
Att'ys for Plaintiff.

THE STATE OF OHIO, }
Mahoning County. }

T. W. Sanderson, being sworn, says that he is one of the plaintiff's attorneys herein; that the plaintiff is a non-resident of and absent

from said county, and that he believes the facts stated in the foregoing petition to be true.

T. W. SANDERSON.

37 Sworn to and subscribed by said T. W. Sanderson before me this 10th day of October, 1889.

GEORGE E. ROSE,
[SEAL.] *Notary Public.*

LAURA F. RUSH
vs.
NEW YORK, PENNSYLVANIA AND OHIO RAILROAD COMPANY, Cleveland and Mahoning Valley Railway Company, and New York, Lake Erie and Western Railroad Company. } Precipe.

Issue summons herein to the sheriff of Mahoning county, Ohio, for the New York, Lake Erie and Western Railroad Company, returnable according to law. Endorse: "Amount claimed, twenty-five thousand dollars ($25,000.00)."

SANDERSON AND NORRIS,
Att'ys for Plaintiff.

38 THE STATE OF OHIO, } ss:
Mahoning County, }

To the sheriff of Mahoning Co.:

You are commanded to notify the New York, Lake Erie and Western Railroad Company (impleaded with others) that it has been sued by Laura F. Rush in the court of common pleas of Mahoning county, and that unless it answer by the 30 day of Nov., A. D. 1889, the petition of the said plaintiff against it filed in the clerk's office of said court, such petition will be taken as true and judgment rendered accordingly.

You will make due return of this summons on the 11 day of Nov., A. D. 1889.

Witness Z. P. Curry, clerk of said court, and the seal thereof, at Youngstown, this 30 day of Oct., A. D. 1889.

[SEAL.] Z. P. CURRY, *Clerk,*
By F. E. PROBST,
Deputy Clerk.

[Endorsed:] No. 15402. Mahoning common pleas. Laura F. Rush, plaintiff, against N. Y., P. & O. R. R. Co. *et al.*, defendants. Summons. Amount claimed, $25,000.00, with interest from ——. Returnable Nov. 11, 1889. Returned and filed Nov. 11, 1889. Z. P. Curry, clerk. Sanderson & Norriss, plaintiff's attorneys.

Sheriff's Return.

THE STATE OF OHIO, } ss:
Mahoning County, }

Received this writ October 31st, A. D. 1889, and, pursuant to its command, on the 31st day of October, A. D. 1889, I notified the within-named def't, The New York, Lake Erie and Western Railroad Company, by delivering to B. P. Holmes, a regular ticket agent of said company, a true and certified copy thereof, with endorsements thereon, after having failed to find the president, vice-president, sec'y, treasurer, chairman of board of directors, or any other chief officer of the within-named company.

Sheriff's fees.	
Service	$ 30
Mileage	80
Cop.	20
Return	25
Docket	25
Total	$1 80

O. EWING, *Sheriff,*
By R. M. HILANDS, *Dep-ty.*

39 THE STATE OF OHIO, } ss:
Mahoning County, }

In the Court of Common Pleas.

LAURA F. RUSH, Plaintiff,
vs.
THE NEW YORK, PENNSYLVANIA AND OHIO RAILROAD COMPANY *et al.*, Defendants. } Motion to Dismiss.

The New York, Lake Erie and Western Railroad Company, appearing solely for the purpose of this motion and not intending hereby to enter its appearance to this action, moves the court that it be dismissed from this cause for the reason that it is not properly made a party defendant to the same by the amended petition filed herein.

WILLIAMSON, BEACH & CUSHING AND
HINE & CLARK,
Att'ys for the New York, Lake Erie and Western Railroad Company.

40 THE STATE OF OHIO, } ss:
Mahoning County, }

In the Court of Common Pleas.

LAURA F. RUSH, Plaintiff,
vs.
THE NEW YORK, PENNSYLVANIA AND OHIO RAILROAD COMPANY, The Cleveland and Mahoning Valley Railway Company, and The New York, Lake Erie and Western Railroad Company, Defendants.

Answer of The New York, Pennsylvania and Ohio Railroad Company to Second Amended Petition.

The defendant The New York, Pennsylvania and Ohio Railroad Company, for its answer to the plaintiff's second amended petition, for its first defense says that it admits that it is and was and that its codefendants, The Cleveland and Mahoning Valley Railway Company and The New York, Lake Erie and Western Railroad Company, are and were railroad corporations, as in said second amended petition alleged; admits that the defendant The Cleveland and Mahoning Valley Railway Company is and was the owner of a line of railway which has been since August 30th, 1886, and now is in the possession and control of and operated by the defendant The New York, Lake Erie and Western Railroad Company under lease from this defendant, dated April 30th, 1883, as alleged in said second amended petition; and this defendant denies each and every allegation in said second amended petition contained and not hereinbefore specifically admitted to be true.

Second defense.—For its second defense to plaintiff's second amended petition this defendant says that it adopts as if
41 here rewritten all of the admissions contained in its first defense herein, and further says that long prior to April 13th, 1883, the defendant The Cleveland and Mahoning Valley Railway Company, as it was authorized to do by the law of the State of Ohio, duly let and leased its said railroad line, property, and the equipment thereof to this defendant, and that said property was on said April 13th, 1883, and had been for a long time prior thereto and continued to be up to April 30th, 1883, in the lawful and exclusive possession of this defendant under said lease.

That on April 30th, 1883, this answering defendant duly and lawfully let and leased said railroad property and equipment to the defendant The New York, Lake Erie and Western Railroad Company, which said company thereupon entered into possession thereof under said lease, and has ever since been and now is in the lawful, sole, and exclusive possession, occupancy, and control of the same by its officers, servants, and agents, over whom this defendant has not now and never had any authority or control

Third defense.—For its third defense to plaintiff's second amended petition this defendant says that if the plaintiff received any injury at the time complained of the same was not caused by any negli-

gence on the part of this defendant, but was caused and contributed to by the negligence and want of care on the part of the plaintiff.

In consideration of the premises this defendant prays to
42 be hence dismissed with its costs.

RUSSELL & RICE AND
HINE & CLARKE,
Att'ys for Answering Defendant.

THE STATE OF OHIO, } ss:
Mahoning County, }

John H. Clarke, being duly sworn according to law, says that he is one of the attorneys for the New York, Pennsylvania and Ohio Railroad Company, which is a corporation, and that the facts stated in the foregoing answer are true as he verily believes.

JOHN H. CLARKE.

Sworn to before me and subscribed in my presence by the said John H. Clarke this 11th day of December, A. D. 1889.

[SEAL.] FRANK L. BALDWIN,
Notary Public.

43 THE STATE OF OHIO, } ss:
Mahoning County, }

In the Court of Common Pleas.

LAURA F. RUSH, Plaintiff,
vs.
THE NEW YORK, PENNSYLVANIA AND OHIO RAILROAD COMPANY, The Cleveland and Mahoning Valley Railway Company, and The New York, Lake Erie and Western Railroad Company, Defendants.

Answer of the Cleveland and Mahoning Valley Railway Company to Second Amended Petition.

The defendant The Cleveland and Mahoning Valley Railway Company, for its answer to plaintiff's second amended petition, says for its first defense that it admits that it is and was, and that its co-defendant-, The New York, Pennsylvania and Ohio Railroad Company and The New York, Lake Erie and Western Railroad Company, were and are railroad corporations, as in plaintiff's second amended petition alleged; admits that it is and was owner of a line of railway which has been since and for a long time prior to August 30th, 1886, in the possession and control of and operated by the defendant The New York, Lake Erie and Western Railroad Company under lease from the defendant The New York, Pennsylvania and Ohio Railroad Company, dated April 30th, 1883.

Further answering, this defendant denies each and every allega-

tion in plaintiff's second amended petition contained and not hereinbefore admitted to be true.

44 Second defense.—For its second defense to plaintiff's second amended petition this defendant says that it adopts, as if here rewritten, all of the admissions in its said first defense contained, and further says that long prior to April 13th, 1883, this defendant, being by law fully authorized, duly let and leased its said line of railroad, its equipment and appurtenances, to the defendant The New York, Pennsylvania and Ohio Railroad Company, and that long prior to said April 13th, 1883, said line of railroad was in the exclusive possession and control of said The New York, Pennsylvania and Ohio Railroad Company under said lease and so continued to be until about April 30th, 1883, from which date the same has been in the exclusive possession and control of the defendant The New York, Lake Erie and Western Railroad Company as sublessee of the defendant The New York, Pennsylvania and Ohio Railroad Company, and during all of said periods of time said codefendants have been operating said line of railway by their officers, agents, and servants, over whom this defendant had no control.

Further this defendant says that if the plaintiff received any injuries at the time complained of the same were not caused by any negligence or want of care on the part of this defendant, but by the negligence and want of care on the part of the plaintiff.

In consideration of the premises this plaintiff prays to be hence dismissed with its costs.

RUSSELL & RICE &
HINE & CLARKE,
Att'ys for Answering Defendants.

45 THE STATE OF OHIO, } ss:
Mahoning County, }

John H. Clarke, being duly sworn, says, according to law, that he is one of the attorneys for the Cleveland and Mahoning Valley Railway Company, which is a corporation, and that the facts stated in the foregoing answer are true, as he verily believes.

JOHN H. CLARKE.

Sworn to before me and subscribed in my presence by the said John H. Clarke this 11th day of December, A. D. 1889.

FRANK L. BALDWIN,
[SEAL.] *Notary Public.*

46 THE STATE OF OHIO, } ss:
Mahoning County, }

In the Court of Common Pleas.

LAURA F. RUSH, Plaintiff,
vs.
THE NEW YORK, PENNSYLVANIA AND OHIO Railroad Company, The Cleveland and Mahoning Valley Railway Company, and The New York, Lake Erie and Western Railroad Company, Defendants. } Petition for Removal.

To the honorable court of common pleas of Mahoning county, Ohio:

Your petitioner, The New York, Lake Erie and Western Railroad Company, represents that the above-entitled suit was brought and begun against your petitioner and others in the court of common pleas of Mahoning county, Ohio, on the 10th day of October, A. D. 1889; that said suit is still pending in said court, but the same has not been tried, and that in said suit there is a controversy between said plaintiff, Laura F. Rush, and your petitioner; that at the time when said suit was brought and at the present time said plaintiff was and is a citizen and resident of the State of Ohio, and your petitioner, The New York, Lake Erie and Western Railroad Company, defendant, was and is a citizen of the State of New York, and then was and now is a corporation organized, incorporated, and doing business solely under and by virtue of the laws of the State of New York.

47 Your petitioner further says that it has reason to believe and does believe that from prejudice and from local influence it will not be able to obtain justice in said court of common pleas or in any other court of said State of Ohio to which it has a right on account of said prejudice or local influence to remove said cause; and your petitioner further says that from prejudice and from local influence it will not be able to obtain justice in said court of common pleas or in any other State court to which it has a right under the laws of the State of Ohio, on account of such prejudice or local influence, to remove said cause, and your petitioner desires to remove said suit into the circuit court of the United States for the northern district of Ohio, eastern division, in pursuance of the act of Congress in that behalf provided, to wit, the act approved March 3rd, 1887, entitled An act to amend an act of Congress approved March 3rd, 1875, entitled An act to determine the jurisdiction of circuit courts, and to regulate the removal of causes from State courts, and for other cause, and further regulate the jurisdiction of the circuit court of the United States, and for other purposes.

Your petitioner further says that it has filed the affidavit required by the statute in such cases, and offers herewith its bond, executed by the New York, Lake Erie and Western Railroad Com-

pany and —— —— and —— ——, as sureties, in the penal sum of five hundred dollars, conditioned as by statute required.

Your petitioner therefore prays that said bond may be
48 accepted as good and sufficient, according to the act of Congress, and that said suit may be removed into the circuit court of the United States in and for said northern district of Ohio, eastern division, pursuant to the act of Congress in such cases made and provided, and that no further proceeding may be had therein in this court; and your petitioner will ever pray, etc.

WILLIAMSON, BEACH & CUSHING AND
HINE & CLARKE,
Att'ys for Defendant The New York, Lake Erie and Western Railroad Company.

49 THE STATE OF OHIO, } ss:
Mahoning County, }

In the Court of Common Pleas.

LAURA F. RUSH, Plaintiff,
vs.
THE NEW YORK, PENNSYLVANIA AND OHIO RAILROAD Company, The Cleveland and Mahoning Valley Railway Company, and The New York, Lake Erie and Western Railroad Company, Defendants. } Affidavit.

THE STATE OF OHIO, } ss:
Cuyahoga County, }

I, A. M. Tucker, being first duly sworn, do say that I am the general superintendent of the New York, Lake Erie and Western Railroad Company, having in charge the New York, Pennsylvania and Ohio Railroad Company and the Cleveland and Mahoning Valley Railway Company, and that said The New York, Lake Erie and Western Railroad Company is one of the defendants in the above-entitled case, and that I have control of the litigation involved in said cause for said company and am authorized to make this affidavit; that I have read the foregoing petition and know the contents thereof, and that the statements and allegations therein contained are true as I verily believe.

And I further say that I have reason to believe and do believe that from prejudice and from local influence said New York, Lake Erie and Western Railroad Company will not be able to
50 obtain justice in said State court or in any other State court to which it has the right, on account of said prejudice or local influence, to remove said cause.

And I further say that said railroad company, from prejudice and local influence, will not be able to obtain justice in said court of common pleas or in any other State court to which it has under the laws of the said State of Ohio the right, on account of such prejudice or local influence, to remove said cause.

A. M. TUCKER,
Gen'l Sup't.

Sworn to before me and subscribed in my presence by the said A. M. Tucker this 11th day of December, A. D. 1889.

WM. E. TALCOTT,
[SEAL.] *Notary Public.*

51 *Bond.*

Know all men by these presents that we, The New York, Lake Erie and Western Railroad Company, as principal, and John Tod and —— ——, as sureties, are hereby held and firmly bound unto Laura F. Rush in the penal sum of five hundred dollars, just and lawful money of the United States; for the payment of which, well and truly to be made, we hereby bind ourselves, jointly and severally, firmly by these presents.

The condition of this obligation is such that if said New York, Lake Erie and Western Railroad Company shall enter and file or cause to be entered and filed in the next circuit court of the United States in and for the northern district of Ohio, eastern division, on the first day of its session, copies of all process, pleadings, and depositions, testimony, and other pleadings in a certain suit or action now pending in the court of common pleas in the county of Mahoning, State of Ohio, in which Laura F. Rush is plaintiff and The New York, Lake Erie and Western Railroad Company and others are defendants, and shall do such other and appropriate acts as by the act of Congress in that behalf is required to be done upon the removal of said suit from said State court into the United States court, and shall well and truly pay all costs that may be awarded by the said circuit court of the United States if said court shall hold that said suit was wrongfully or improperly removed thereto, and shall appear and enter special bail in said suit if special bail was originally requisite therein, then this obligation to be void;
52 otherwise in full force and virtue.

THE NEW YORK, LAKE ERIE AND WESTERN RAILROAD COMPANY,
By A. M. TUCKER, *Gen'l Sup't.*
JOHN TOD.

53 THE STATE OF OHIO, } ss:
Mahoning County, }

In the Court of Common Pleas.

I, Z. P. Curry, clerk of the court of common pleas of Mahoning county, Ohio, do hereby certify that the foregoing transcript contains due and correct copies of the process issued in said cause, in which Laura F. Rush is plaintiff and The New York, Pennsylvania and Ohio Railroad Company, The Cleveland and Mahoning Valley Railway Company, and The New York, Lake Erie and Western Railroad Company are defendants, and also true and correct copies of all pleadings, journal and docket entries, and all other proceedings in said cause; and I further certify that there has been no depositions filed or testimony taken in said cause.

Witness my hand and the seal of said court, at Youngstown, this 3rd day of January, A. D. 1890.

[SEAL.]

Z. P. CURRY, *Clerk*,
By F. E. PROBST,
Deputy Clerk.

54 And afterwards, to wit, on the 20th day of March, A. D. 189–, an order was made in said cause; which order is in the words and figures following, to wit:

LAURA F. RUSH
vs.
N. Y., P. & O. R. R. Co. *et al.* } Law. No. 4763.

This day came the parties, by their counsel, and came on for hearing the motion of the New York, Lake Erie and Western Railroad Company to be dismissed from this cause, and the same was argued by counsel, and, due consideration being given by the court, it is ordered that said motion be denied; to which ruling of the court defendant New York, Lake Erie and Western Railroad Co. excepts.

And afterwards, to wit, on the 21st day of March, A. D. 1890, an order was entered in said cause; which order is in the words and figures following, to wit:

LAURA F. RUSH
vs.
N. Y., P. & O. R. R. Co. *et al.* } Law. No. 4763.

In this cause leave is given defendant New York, Lake Erie & Western R. R. Co. to plead by April 5th.

55 And afterwards, to wit, on the 12th day of April, A. D. 1890, an answer was filed in said cause; which answer is in the words and figures following, to wit:

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

LAURA F. RUSH, Plaintiff,
vs.
THE NEW YORK, PENNSYLVANIA AND Ohio Railroad Company, The Cleveland and Mahoning Valley Railway Company, and The New York, Lake Erie and Western Railroad Company, Defendants. } Answer of the New York, Lake Erie and Western Railroad Company.

The defendant The New York, Lake Erie and Western Railroad Company, for its answer to the plaintiff's second amended petition, for its first defense says that it admits that it is and was, and that its codefendants, The Cleveland and Mahoning Valley Railway

Company and The New York, Pennsylvania and Ohio Railroad Company, are and were railroad corporations, as in said second amended petition alleged; admits that the defendant The Cleveland and Mahoning Valley Railway Company is and was owner of a line of railway which has been since August 30th, 1886, and now is in the possession and control of and operated by this defendant under lease from the New York, Pennsylvania and Ohio Railroad Company, dated April 30th, 1883; and this defendant denies each and every allegation in said second amended petition contained and not hereinbefore specifically admitted to be true.

Second defense.—For its second defense to the plaintiff's
56 second amended petition this defendant adopts the admissions hereinbefore made as if here rewritten; and further says that if the plaintiff received any injuries at the time complained of, the same were caused, not by any negligence upon the part of this defendant, but were caused and contributed to by negligence and want of care on part of the plaintiff.

In consideration of the premises this defendant prays to be hence dismissed with its costs.

WILLIAMSON, BEACH & CUSHING AND
HINE & CLARKE,
Attorneys for Answering Defendant.

THE STATE OF OHIO, }
Mahoning County, } *ss:*

John H. Clarke, being duly sworn, says he is one of the attorneys for the New York, Lake Erie and Western Railroad Company, which is a corporation, and that the facts stated in the foregoing answer are true as he verily believes.

JOHN H. CLARKE.

Sworn to before me and subscribed in my presence by the said John H. Clarke this 8th day of April, A. D. 1890.

L. H. E. LOWRY,
Notary Public. [SEAL.]

57 And afterwards, to wit, on the 17th day of April, A. D. 1890, a reply was filed in said cause; which reply is in the words and figures following, to wit:

LAURA F. RUSH
vs.
THE NEW YORK, PENNSYLVANIA & OHIO RAILROAD COMPANY, The Cleveland & Mahoning Valley Railway Company, and The New York, Lake Erie and Western Railroad Company. } Reply.

The plaintiff, for reply to the answer of the New York, Lake Erie and Western Railroad Company herein filed, says that she denies each and every allegation, statement, and averment in the second defense of said answer contained.

THE STATE OF OHIO, }
Mahoning County. }

Laura F. Rush, plaintiff, being sworn, says that she believes the facts stated in the foregoing reply to be true.

LAURA F. RUSH.

Sworn to and subscribed by said Laura F. Rush before me this 17th day of April, 1890.

THOS. W. SANDERSON,
Master Com'r, Mahoning Co., Ohio.

58 And afterwards, to wit, on the 21st day of April, A. D. 1890, an order was entered in said cause; which order is in the words and figures following, to wit:

LAURA F. RUSH
vs.
N. Y., P. & O. R. R. Co. *et al.* } Law. No. 4763.

In this cause leave is given plaintiff to file replies to the answer of New York, Pennsylvania and Ohio Railroad Company and Cleveland and Mahoning Valley Railway Company instanter.

And afterwards, to wit, on the 25th day of April, A. D. 1890, a reply was filed in said cause; which reply is in the words and figures following, to wit:

LAURA F. RUSH
vs.
NEW YORK, PENNSYLVANIA AND OHIO RAILROAD COMPANY *et als.* } Reply.

The plaintiff, for reply to the second defense contained in the answer of the New York, Pennsylvania and Ohio Railroad Company and the Cleveland and Mahoning Valley Railway Company filed December 15th, 1888, says that since the filing of said answer the said New York, Lake Erie and Western Railroad Company has, according to law, been made a party defendant in said cause and has filed its answer therein; that by reason thereof the plaintiff is entitled to recover against all of said defendants.

SANDERSON AND NORRIS,
Att'ys for Pl'ff.

59 THE STATE OF OHIO, }
Mahoning County. }

The above-named Laura F. Rush, being sworn, says that she believes the facts stated in the foregoing reply to be true.

LAURA F. RUSH.

Sworn to and subscribed before me this 23rd day of April, 1890.

THOS. W. SANDERSON,
Master Com'r, Mahoning Co., Ohio.

And afterwards, to wit, on Thursday, October 16th, A. D. 1890, the Honorable Augustus J. Ricks, district judge, presiding, an order was entered in said cause; which order is in the words and figures following, to wit:

LAURA F. RUSH
vs.
N. Y., P. & O. R. R. Co. *et al.* } Law. No. 4763.

This day came the parties, by their counsel, and a jury, being called, came, to wit, Samuel Palmer, Jacob Smuck, M. A. Day, John T. Moore, John McNamara, Jacob Schmidt, C. T. Beckwith, H. C. Gray, David Bash, A. Cunningham, Andrew Donnenwirth, and John Rudebaugh, who, being duly elected, were duly empanelled and sworn to well and truly try the issued joined between parties at bar of court, and thereupon trial of this case proceeded. Testimony on behalf of plaintiff begun but not closed, and further proceedings in this behalf were postponed until tomorrow morning.

60 And afterwards, to wit, on Friday, October 17th, 1890, an order was entered in said cause; which order is in the words and figures following, to wit:

LAURA F. RUSH
vs.
NEW YORK, PENNA. AND OHIO R. R. COMPANY. } Law. No. 4763.

This day again came the parties, by their counsel, and came also the jury as heretofore duly empanelled and sworn herein, and thereupon the trial of this case proceeded. Testimony on behalf of the plaintiff was continued but not closed, when further proceedings in this behalf were postponed until Monday morning.

And afterwards, to wit, on Monday, October 20th, A. D. 1890, an order was entered in said cause; which order is in the words and figures following, to wit:

LAURA F. RUSH
vs.
N. Y., P. & O. R. R. Co. *et al.* } Law. No. 4763.

This day again came the parties, by their counsel, and came also the jury as heretofore duly empanelled and sworn herein, and the trial of this case proceeded. Plaintiff's testimony was continued but not closed, when further proceedings in this case were postponed until tomorrow morning.

61 And afterwards, to wit, on Tuesday, October 21st, A. D. 1890, an order was entered in said cause; which order is in the words and figures following, to wit:

LAURA F. RUSH
vs.
NEW YORK, PENNA. AND OHIO R. R. Co. *et al.* } Law. No. 4763.

This day again came the parties, by their counsel, and came also the jury as heretofore duly empanelled and sworn herein, and thereupon the trial of this case proceeded. Plaintiff's testimony-in-chief was closed and defendants' testimony begun but not closed, when further proceedings in this case were postponed until to-morrow morning.

And afterwards, to wit, on Wednesday, October 22nd, A. D. 1890, an order was entered in said cause; which order is in the words and figures following, to wit:

LAURA F. RUSH
vs.
NEW YORK, PENNA. AND OHIO R. R. Co. } Law. No. 4763.

This day again came the parties, by their counsel, and came also the jury as heretofore duly empanelled and sworn herein, and thereupon the trial of this case proceeded. Defendants' testimony was closed and plaintiff's testimony in reply begun but not closed, when further proceedings in this case were postponed until to-morrow morning.

62 And afterwards, to wit, on Thursday, October 23rd, A. D. 1890, an order was entered in said cause; which order is in the words and figures following, to wit:

LAURA F. RUSH
vs.
NEW YORK, PENNA. AND OHIO R. R. Co. } Law. No. 4763.

This day again came the parties, by their counsel, and came also the jury as heretofore duly empanelled and sworn herein, and thereupon the trial of this case proceeded. The testimony was closed and arguments of counsel begun but not closed, when further proceedings in this case were postponed until tomorrow morning.

And afterwards, to wit, on Friday, October 24th, A. D. 1890, an order was entered in said cause; which order is in the words and figures following, to wit:

LAURA F. RUSH
vs.
NEW YORK, PENNA. AND OHIO R. R. Co. } Law. No. 4763.

This day again came the parties, by their counsel, and the jury as heretofore duly empanelled and sworn herein, and thereupon the trial of this case proceeded. Arguments of counsel were finished. Jury, having first received their instructions from the court, retired for deliberation in charge of a sworn officer of the court; and after a time said jury came again into court and for verdict say:

"We, the jury in this case, being duly empanelled and sworn, do find for the plaintiff, and we do assess her damages against the New York, Lake Erie and Western Railroad Company to the sum of $10,000, ten thousand dollars.

ALVINZI CUNNINGHAM, *Foreman.*"

63 And afterwards, to wit, on the 27th day of October, A. D. 1890, a motion was filed in said cause; which motion is in the words and figures following, to wit:

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

LAURA F. RUSH, Plaintiff, *vs.* THE NEW YORK, PENNSYLVANIA AND Ohio Railroad Company *et al.*, Defendants.	Motion of the New York, Lake Erie and Western Railroad Company for a New Trial.

Now comes The New York, Lake Erie and Western Railroad Company, defendant, and moves the court to set aside the verdict and grant a new trial in this cause on the following grounds, to wit:

1. That the damages are excessive, appearing to have been given under the influence of passion and prejudice.
2. That the verdict is not sustained by sufficient evidence.
3. That the verdict is contrary to law.
4. That the court erred at the trial in excluding evidence offered on behalf of defendants.
5. That the court erred at the trial in admitting evidence offered on behalf of plaintiff and objected to by defendants.
6. That the court erred in its charge to the jury.
7. That the court erred in refusing to charge the jury as requested by defendants and by this defendant.
8. That the verdict is improper and void, in that it is incomplete as to the defendants and each of them, sued jointly with this defendant, to wit, The New York, Pennsylvania and Ohio Railroad Company and The Cleveland and Mahoning Valley Railway Company.

64 9. That the verdict is improper and void, in that it contains a general finding in favor of plaintiff, together with an assessment of damages against one of the defendants only, to wit, this defendant.

10. That the court erred in directing the jury, after the lawful submission of the cause to them, not to consider nor to return any verdict upon the issues as between plaintiff and the other defendants and each of them sued jointly with this defendant, to wit, The New York, Pennsylvania and Ohio Railroad Company and The Cleveland and Mahoning Valley Railway Company.

11. On the ground of newly discovered evidence material for

each and all the defendants, which could not with reasonable diligence have been discovered and produced at the trial.

HINE & CLARKE AND
WILLIAMSON & CUSHING,
Attorneys for said Defendants.

65 And afterwards, to wit, on the 27th day of October, A. D. 1890, a motion was filed in said cause; which motion is in the words and figures following, to wit:

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

LAURA F. RUSH, Plaintiff, *vs.* THE NEW YORK, PENNSYLVANIA AND Ohio Railroad Company *et al.*, Defendants.	Motion of the New York, Pennsylvania and Ohio Railroad Company for a New Trial.

Now comes The New York, Pennsylvania and Ohio Railroad Company, defendant, and moves the court to set aside the verdict and grant a new trial in this cause on the following grounds, to wit:

1. That the damages are excessive, appearing to have been given under the influence of passion and prejudice.
2. That the verdict is not sustained by sufficient evidence.
3. That the verdict is contrary to law.
4. That the court erred at the trial in excluding evidence offered on behalf of defendants.
5. That the court erred at the trial in admitting evidence offered on behalf of plaintiff and objected to by defendants.
6. That the court erred in its charge to the jury.
7. That the court erred in refusing to charge the jury as requested by defendants and by this defendant.
8. That the verdict is improper and void, in that it is incomplete as to this defendant and as to the Cleveland and Mahoning Valley Railway Company, sued jointly with it.

66 9. That the verdict is improper and void, in that it contains a general finding in favor of plaintiff, together with an assessment of damages against one of the defendants only, to wit, The New York, Lake Erie and Western Railroad Company.

10. That the court erred in directing the jury, after the lawful submission of the cause to them, not to consider nor to return any verdict upon the issues as between plaintiff and this defendant and between plaintiff and the Cleveland and Mahoning Valley Railway Company, sued jointly with this defendant.

11. On the ground of newly discovered evidence material for each and all the defendants, which could not with reasonable diligence have been discovered and produced at the trial.

HINE & CLARKE AND
WILLIAMSON & CUSHING,
Attorneys for said Defendants.

67 And afterwards, to wit, on the 27th day of October, A. D. 1890, a motion was filed in said cause; which motion is in the words and figures following, to wit:

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

LAURA F. RUSH, Plaintiff, *vs.* THE NEW YORK, PENNSYLVANIA AND Ohio Railroad Company *et al.*, Defendants.	Motion of the Cleveland and Mahoning Valley Railway Company for a New Trial.

Now comes The Cleveland and Mahoning Valley Railway Company, defendant, and moves the court to set aside the verdict and grant a new trial in this cause on the following grounds, to wit:

1. That the damages are excessive, appearing to have been given under the influence of passion and prejudice.
2. That the verdict is not sustained by sufficient evidence.
3. That the verdict is contrary to law.
4. That the court erred at the trial in excluding evidence offered on behalf of defendants.
5. That the court erred at the trial in admitting evidence offered on behalf of plaintiff and objected to by defendants.
6. That the court erred in its charge to the jury.
7. That the court erred in refusing to charge the jury as requested by defendants and by this defendant.
8. That the verdict is improper and void, in that it is incomplete as to this defendant and as to the New York, Pennsylvania and Ohio Railroad Company, sued jointly with it.

68 9. That the verdict is improper and void, in that it contains a general finding in favor of plaintiff, together with an assessment of damages against one of the defendants only, to wit, The New York, Lake Erie and Western Railroad Company.

10. That the court erred in directing the jury, after the lawful submission of the cause to them, not to consider nor to return any verdict upon the issues as between plaintiff and this defendant and between plaintiff and the New York, Pennsylvania and Ohio Railroad Company, sued jointly with this defendant.

11. On the ground of newly discovered evidence material for each and all the defendants, which could not with reasonable diligence have been discovered and produced at the trial.

HINE & CLARKE AND
WILLIAMSON & CUSHING,
Attorneys for said Defendants.

69 And afterwards, to wit, on the 31st day of January, A. D. 1891, being a day of the October term, 1890, of said court, an order was entered in said cause; which order is in the words and figures following, to wit:

LAURA F. RUSH
vs.
THE N. Y., L. E. & W. R. R. COMPANY. } Law. No. 4763.

This day came the defendant The New York, Lake Erie and Western R. R. Co. in this case and tendered its bill of exceptions, which is allowed, filed, signed, sealed, and ordered to be made a part of the record in this case.

And afterwards, to wit, on the 2nd day of February, A. D. 1891, there was filed in this cause a bill of exceptions, which is in the words and figures following, to wit:

In the United States Circuit Court for the Northern District of Ohio, Eastern Division.

LAURA F. RUSH
vs.
THE NEW YORK, PENNSYLVANIA & OHIO RAILroad Company, The Cleveland & Mahoning Valley Railway Company, and The New York, Lake Erie & Western Railroad Company. } Bill of Exceptions.

Be it remembered that on the trial of this cause in the United States circuit court for the northern district of Ohio, eastern
70 division, at the October term thereof, 1890, the plaintiff, to maintain the issues on her part to be maintained, offered evidence tending to show that the allegations contained in her petition were all true, except that no evidence was offered as to the precise time at which the ditch across the sidewalk into which the plaintiff fell and was injured was opened.

And the plaintiff, being herself sworn as a witness, testified as follows:

Q. Do you remember the date or the time that you were hurt in some way in Girard by falling on your breast?
A. Yes, sir.
Q. What was the date?
A. August 30th, 1886.
Q. Where had you gone that evening?
A. I had been over to the Pennsylvania station.
Q. That was across the other railroads?
A. Yes, sir.
Q. About how far was that below the street that you came down; some distance, was it?
A. I don't know. I should think it was almost half way between the Nypano public station and the public highway.
Q. How did you come down that night?
A. I drove down.
Q. In the buggy?
A. Yes, sir.

Q. Who was with you?
A. My brother and my little cousin.
Q. Which brother?
71 A. Johnny.
Q. And who was your cousin—what was his name?
A. Joseph Stambaugh.
Q. You say you went to the Pennsylvania depot?
A. Yes, sir.
Q. What were you doing there?
A. I went there to send a package.
Q. By express?
A. By express.
Q. They had an express office, then, in the depot, had they?
A. Yes, sir.
Q. Now, just tell the jury how you got down there. Did you drive across the railroad with your buggy?
A. No, sir.
Q. Any of them?
A. No, sir.
Q. How did you go?
A. I drove down, thinking that I would drive around to the Pennsylvania station, and when I got down to the Nypano track I thought it was so dark it would be unsafe to drive around there and I turned around on the public road right at the Nypano station track and got out there.
Q. Was it dark when you got down there?
A. Yes, sir; and I got out there and walked——
Q. Do you remember how many tracks there were to cross at that time—Nypano tracks as they are called?
A. No, sir; I don't just remember how many.
Q. But you had to cross them to get to the other?
72 A. Yes, sir; all of them.
Q. This street you came down is Liberty street?
A. I think so.
Q. What part of the town did you then live in? Was it near that street?
A. Where I am living now.
Q. That is north some distance of Liberty street?
A. Yes, sir.
Q. And had you often traveled that same ground before?
A. All my life.
Q. Were you accustomed to go to the railroad depots there?
A. Yes, sir.
Q. Both of them?
A. Yes, sir.
Q. And backward and forward on trains?
A. Yes, sir.
Q. How far from the track did your brother stop the buggy?
A. He stopped the carriage right on the track—right down to the track of the Nypano.

Q. Suppose this is Liberty street marked here. You came down near the track on this side?

A. I stopped right there (indicating on map).

Q. You came down this street and stopped, you say, near the railroad track?

A. Yes, sir; just near the track. I don't know but what right on the track.

Q. Where did you go from that?

A. I walked straight across on the highway until I walked across both tracks over past the Pennsylvania track, and then took
73 the platform to the Pennsylvania station.

Q. You walked across the Pennsylvania track?

A. Yes, sir; right on the road.

Q. And then took the platform down to the depot or station?

A. Yes, sir.

Q. Where you transacted your business. How long were you gone there?

A. Just a few minutes, just long enough to do my——

Q. Tell the jury how you started to come back, and describe it in your own way.

A. I walked out to the end of the platform the same as I went in.

Q. Where would the end of the platform be with reference to the street—would it be on the street or beyond the street?

A. It goes almost onto the street; not entirely. You have to walk along tracks quite a ways before you strike the platform.

Q. Then you say you came back in the same way you went in—out towards the street?

A. As far as the platform, and then I struck the sidewalk. In place of going clear out on the driveway I struck the sidewalk and walked upon the sidewalk—I supposed it was, of course, as it always had been.

Q. That would be the south sidewalk, the left hand?

A. That would be going up street again.

Q. The one on your right hand going?

A. Yes, sir.

Q. Now, what did you do after you got there?

A. When I got there I fell in.

Q. Was there any light there?

A. No, sir; it was very dark.

74 Q. After you struck the sidewalk about how far did you go before you met with some accident?

A. Why, a very few steps; I could not just tell.

Q. And what did you fall into?

A. I fell into a ditch.

Q. Can you tell the jury where that was, with reference to whether it was on the sidewalk or not?

A. Yes, sir; it was on the sidewalk—where the sidewalk had always been.

Q. How frequently had you traveled on the sidewalk before that time?

A. Not within two or three days before that.

Q. Had you before that time traveled it often?

A. Yes, sir; all my life. We used to live on that side of the river, and when I went to school I went three times a day.

Q. Three times a day you passed it all that time. How many years was that?

A. I am 29 years old, and I was 25 years old when I was injured——

Q. How many years had you traveled it going to school?

A. When we lived on the other side of the river. We have lived where we are living now nine years, and we have relatives and acquaintances, and I go backwards and forwards a great deal.

Q. Now, just explain to the jury whether there was any light there at the place where you fell in or any other appliance to give you any notice or warning.

A. There was nothing whatever to keep me from falling.

Q. How were you walking—slow or fast?

A. I was walking just along at a common walk.

Q. And all at once went off?

75 A. Yes, sir.

Q. How did you fall?

A. I fell forward.

Q. How did you strike?

A. I struck my breast, the hardest place I struck, and skinned my elbows, my nose, my chin, and my knees, and I was bruised up in general for several days.

* * * * * * *

Q. Going back to that night at the time this accident occurred, you say you had not been along there for two or three days?

A. No, sir.

Q. You did not observe any excavation then about the sidewalk or any ditch there?

A. No, sir.

Q. About what time of night do you think it was you fell into that ditch?

A. I should think it was near 8 o'clock; possibly a little before or maybe a little after; it was near the hour of 8 o'clock.

Q. And you say you are familiar with that ground—pass there frequently? Are you able to state about how far you were inside of the line of the street, the southerly line of the street, when you fell in there?

A. I could not tell just exactly the distance.

Q. About what is your judgment of it?

A. About—I don't just understand you.

Q. About how far were you from the south line of the street—that is, how far were you inside of the sidewalk?

A. Well, I was away over—I was right on the sidewalk when I went in. I don't know how many feet wide the sidewalk

76 is—how wide they claim it to be.

Q. But you know you were on the sidewalk or where the sidewalk had been?

A. Yes, sir.

Cross-examination:

Q. Now, you say you walked directly along the line of the Pennsylvania platform straight out to Liberty street?

A. Yes, sir, and then struck the sidewalk.

Q. And then you turned on the sidewalk and turned to your right or started toward the east?

A. I started right on the sidewalk.

Q. How many steps had you taken before you fell into the ditch?

A. Why, I took a good many before I reached the Nypano track from the Pennsylvania track. There are a great many switches there. I have to walk over quite a distance.

Q. And you were coming up into the town of Girard?

A. Yes, sir.

Q. Now, you say you had been up and down there often before?

A. Yes, sir.

Q. You knew the condition of that ditch along there before?

A. Not as it was that night.

Q. I say you knew what its condition had been before?

A. Yes, sir.

Q. The ditch came up near to the sidewalk always, within a few feet of it, didn't it, as you remember it?

A. No, sir; it was as wide then as it is now—if anything, wider—when I was accustomed to it.

Q. It was about in the same condition before this accident as it is now?

A. Something the same. I don't think it is now quite as wide as it was then.

77 Q. It is a little bit nearer—comes a little bit nearer the sidewalk than it did before the accident.

The COURT: She is talking about the width of the sidewalk.

A. I am talking about what the sidewalk was when I was acquainted with the walk.

Q. My question was whether it came up nearer the sidewalk before the time you were hurt than it does now, or about the same.

A. I should think it was about the same or maybe not quite so near as it used to be when I was acquainted with the sidewalk.

Q. Then I distinctly understand you to say that you were familiar with that situation and that it was as you knew it before the night of the accident in about the condition which it is now.

A. I should think so; possibly wider than it is now, if anything.

Q. That is, the sidewalk is a little wider?

A. Yes, sir.

Q. That is, by that you mean the ditch did not come quite so near the street?

A. Yes, sir.

Q. But upon this night you say it extended out how far into the street?

A. I could not say just the amount of feet.

Q. Did it extend clear across the sidewalk out into the street into the driveway?

A. It was dug clear into the sidewalk, so that if any one was walking along there, not knowing the place was in bad shape, I don't see how they could help falling in.

Q. Did it cross the entire sidewalk?

78 A. Almost; yes, sir; it was dug clear out close to the road.

Q. You say almost?

A. It was dug clear beyond, over half way and beyond out several feet.

Q. Was it dug to the gutter?

A. Yes, sir; it was dug so I fell in—clear in.

Q. Was it dug to the gutter or side to the driveway?

A. I think so; near that. Of course I didn't see it that night and after I fell I was in such condition I could not tell.

79 And the foregoing is all the evidence admitted on the trial of this case tending to show the knowledge which the plaintiff had of the condition of the ditch into which she fell on the night of the accident, and her opportunities of knowledge concerning the same prior thereto.

And the plaintiff, to further maintain the issues upon her part to be maintained, called as a witness JOHN S. RUSH, who testified, among other things, as follows:

Cross-examination:

Q. Did you ever see it open that way before?

A. I saw it once before.

Q. How long before that?

A. I could not say.

Q. About how long, John?

A. I don't know.

Q. One year?

A. No, sir.

Q. Two?

A. No, sir; I could not say how long it was, but I remember seeing it before; just a short time.

Q. How long did it continue open into the street before that?

A. I could not say.

Q. How did you come to remember it at that time?

A. At what time?

Q. When you saw it open this way before this accident.

A. I didn't never think about it until she got hurt, and I remembered of seeing it.

80 Q. When did you first recall that after that you had seen it open before that—today?

A. No, sir; a short time after she got hurt.

Q. How long was it when you had seen it open before?

A. I could not say.

Cross-examination:

Q. Now, you say you walked directly along the line of the Pennsylvania platform straight out to Liberty street?

A. Yes, sir, and then struck the sidewalk.

Q. And then you turned on the sidewalk and turned to your right or started toward the east?

A. I started right on the sidewalk.

Q. How many steps had you taken before you fell into the ditch?

A. Why, I took a good many before I reached the Nypano track from the Pennsylvania track. There are a great many switches there. I have to walk over quite a distance.

Q. And you were coming up into the town of Girard?

A. Yes, sir.

Q. Now, you say you had been up and down there often before?

A. Yes, sir.

Q. You knew the condition of that ditch along there before?

A. Not as it was that night.

Q. I say you knew what its condition had been before?

A. Yes, sir.

Q. The ditch came up near to the sidewalk always, within a few feet of it, didn't it, as you remember it?

A. No, sir; it was as wide then as it is now—if anything, wider—when I was accustomed to it.

Q. It was about in the same condition before this accident as it is now?

A. Something the same. I don't think it is now quite as wide as it was then.

77 Q. It is a little bit nearer—comes a little bit nearer the sidewalk than it did before the accident.

The COURT: She is talking about the width of the sidewalk.

A. I am talking about what the sidewalk was when I was acquainted with the walk.

Q. My question was whether it came up nearer the sidewalk before the time you were hurt than it does now, or about the same.

A. I should think it was about the same or maybe not quite so near as it used to be when I was acquainted with the sidewalk.

Q. Then I distinctly understand you to say that you were familiar with that situation and that it was as you knew it before the night of the accident in about the condition which it is now.

A. I should think so; possibly wider than it is now, if anything.

Q. That is, the sidewalk is a little wider?

A. Yes, sir.

Q. That is, by that you mean the ditch did not come quite so near the street?

A. Yes, sir.

Q. But upon this night you say it extended out how far into the street?

A. I could not say just the amount of feet.

Q. Did it extend clear across the sidewalk out into the street into the driveway?

A. It was dug clear into the sidewalk, so that if any one was walking along there, not knowing the place was in bad shape, I don't see how they could help falling in.

Q. Did it cross the entire sidewalk?

78 A. Almost; yes, sir; it was dug clear out close to the road.

Q. You say almost?

A. It was dug clear beyond, over half way and beyond out several feet.

Q. Was it dug to the gutter?

A. Yes, sir; it was dug so I fell in—clear in.

Q. Was it dug to the gutter or side to the driveway?

A. I think so; near that. Of course I didn't see it that night and after I fell I was in such condition I could not tell.

79 And the foregoing is all the evidence admitted on the trial of this case tending to show the knowledge which the plaintiff had of the condition of the ditch into which she fell on the night of the accident, and her opportunities of knowledge concerning the same prior thereto.

And the plaintiff, to further maintain the issues upon her part to be maintained, called as a witness JOHN S. RUSH, who testified, among other things, as follows:

Cross-examination:

Q. Did you ever see it open that way before?

A. I saw it once before.

Q. How long before that?

A. I could not say.

Q. About how long, John?

A. I don't know.

Q. One year?

A. No, sir.

Q. Two?

A. No, sir; I could not say how long it was, but I remember seeing it before; just a short time.

Q. How long did it continue open into the street before that?

A. I could not say.

Q. How did you come to remember it at that time?

A. At what time?

Q. When you saw it open this way before this accident.

A. I didn't never think about it until she got hurt, and I remembered of seeing it.

80 Q. When did you first recall that after that you had seen it open before that—today?

A. No, sir; a short time after she got hurt.

Q. How long was it when you had seen it open before?

A. I could not say.

Q. Was there any crossing over it then?
A. No, sir.
Q. Any method of crossing it at all?
A. No, sir.
Q. How deep was it?
A. I could not say.
Q. Was it one foot or three?
A. I could not say how many feet it was.
Q. Or four feet?
A. I could not say.
Q. You can't say?
A. No, sir; not how many feet.
Q. Did you go up to look into it?
A. Yes, sir.
Q. Yet you can't give the jury any estimate whether it was one foot or four feet deep?
A. I don't know how deep it was.
Q. Can you tell the jury whether it was one or more?
A. It was more than one foot.
Q. Was it as much as two feet?
A. Yes, sir.
Q. Was it three?
A. It may have been three feet.
81 Q. Was it as much as four?
A. I don't know.
Q. But you will say in your judgment it was three feet deep?
A. It was all of three feet. I think it may have been deeper.
Q. When you were down to see it before, when it was in that condition, do you remember what time of the day it was?
A. No, sir.
Q. Morning or evening?
A. No, sir.
Q. Can you give the year, then?
A. No, sir.
Q. Yet you do remember that the earth both times was placed upon the roadside of the ditch looking towards the village?
A. Yes, sir.
Q. And you remember the depth distinctly, not to inches, but you remember it was more than three feet?
A. I could not say how deep it was. It must have been three feet deep, anyway; I think it was.

82 The plaintiff also called as a witness ALBERT MOORE, who testified, among other things, as follows:

Cross-examination:

Q. How long had it been in the condition as you observed it the night of the accident?
A. I don't know just how long it had been.
Q. Several days?

A. It had been there several days, because they had been working at it—working along there.
Q. Do you think as much as a week?
A. I would not say positively; I don't know.
Q. But it was for several days?
A. Yes, sir; I know.

The plaintiff also called as a witness SIMEON CARLETON, who testified, among other things, as follows:

Q. Did you see it before she was injured?
A. Oh, I seen it for several times that I crossed before I heard of this accident.
Q. The last time you saw it before the accident how was it?
A. About in the same condition it had been from the time it was dug open.
Q. About how deep had they dug it there?
A. I think it was 30 inches—between that and three feet.
Q. About how wide was the ditch on top?
A. Two feet and a half—in the neighborhood of that.
83 Q. Did you observe whether there were any timbers in it or not—ties or anything?
A. I didn't observe whether there was. When it was dug out there was timber thrown out—simply pieces of rotten timber like logs; it may have been ties.
Q. I mean, after they had made the ditch, were any timbers placed in it?
A. No, sir; I didn't observe that.

Cross-examination:

Q. About how long before the accident would you say you had noticed the ditch?
A. Oh, I think I would say two or three weeks at least. I had noticed it for some time.
Q. And it had been in this same condition in which you described it for that length of time?
A. Yes, sir.
Q. During that time—during the two or three weeks before the accident that you noticed it—it was open across the sidewalk, I think you say?
A. Yes, sir; extending open to the north edge of the sidewalk.
Q. The sidewalk was about how wide?
A. Oh, it is perhaps six feet.
Q. For three or four weeks before the accident you noticed the outlet when you went by; every two or three days, when you did go by, this ditch was open clear to that street ditch?
A. I had crossed there several times—a good many times—while it was in that condition.
Q. And it extended the entire width, clear across the sidewalk?
84 A. Yes, sir.

Q. All this time?

A. Extended to the sewer.

Q. How deep do you say that ditch was?

A. Across the sidewalk?

Q. Yes, sir; the place where it had been cut to the sidewalk.

A. Oh, I would judge it was between 30 inches and three feet, the deepest place down.

Q. How wide?

A. Well, in cutting it down the dirt was in a condition it would not stand square, the wall would not; it would make it sloping; it would make it two feet and a half wide on top.

Q. Well, the banks of that ditch were not supported by anything—with ties or timber—to hold them up?

A. The first foot on the top of it was cinder and ashes.

Q. No timbers whatever?

A. I didn't discover any timbers—notice any timbers.

Q. You certainly would have seen them if they had been there, I suppose?

A. I think I would.

Q. And this dirt that was taken out where it was cut through the sidewalk was piled up, as I understand, on the east, up and down the side of the ditch?

A. Thrown out—yes, sir—on the east side of the ditch.

Q. Was that a regular row of earth piled up the entire length of the ditch?

A. It extends—the height of the dirt thrown out was about the middle of the sidewalk, and it sloped down, a smaller ridge
85 of dirt, towards the north edge of the sidewalk.

Q. There was less towards the north edge of the street—towards the sewer?

A. It was as high on the north edge as it was on the sewer.

Q. So that if a person would walk along anywhere on that sidewalk he would have to step across or go across the ditch two feet and a half wide on top and then climb over this pile of dirt on the other side?

A. Yes; or go north around the ditch.

Q. If he went around on the north he would have to get clear out into the street or into the street ditch?

A. Not into the street; just around across the gutter—across the ditch of the street.

Q. About how long do you think it was after the accident you observed this ditch again?

A. Oh, two or three days afterwards I was across again.

Q. Then you found it just in the same condition you had seen it three or four weeks before that?

A. Just in the same condition; hadn't been changed.

The plaintiff also called as a witness JOHN L. RUSH, who testified, among other things, as follows:

Q. Now, in what condition did you find things there the next morning as to the place she had described to you?

A. I found that the sidewalk was open. I knew it was open before I went down.

Q. Did anybody go down with you?

A. I took George Latham. We had his name before as a
86 witness. He has died since; died last spring.

Q. You formerly lived on the other side of the river, I believe?

A. Yes, sir; years ago.

Q. On the west side?

A. Yes, sir.

Q. How long is it since you removed from the west side to the east side?

A. Nine years ago.

Q. During the time you lived on the west side had you frequent occasion to cross there?

A. Oh, yes.

Q. And since you moved onto the east side how has it been?

A. Why, I am down to the cars most every day of my life; sometimes three or four times a day; unload stock there most every day.

Q. At the railroad?

A. Yes, sir.

Q. How long before she was injured did you observe the condition the ditch was in?

A. I could not say exactly. I know it had been in bad shape; that after night it was not safe for a man to go across there without getting out in the road and going around a pile of dirt. There was an old stub of a sign post had been cut off that stood right at the corner between the main traveled road and the sidewalk, at the side of the sidewalk next to the road, and when we went around this place where it was open in the road we took the inside of this old sign post around in that shape (indicating), and when you went on the other side you had to go on this side of the sign post.

87 Q. Do you remember now about how long it was before your daughter was hurt that you learned or saw that place in that condition?

A. I could not state exactly how long it was before, but I know it was not a great while before.

Cross-examination:

Q. How long before this accident did you observe the ditch in the condition in which it was the day after the accident? For how long a time had it been in that same condition?

A. Oh, it was only a short time; a few days, perhaps; it could not have been longer, because those men had been there opening it up but a short time before that—a few days before. I would not say to the day.

Q. Was it not a few weeks?

A. I don't think it was.

Q. You had seen it yourself?

A. I don't know exactly how long a time it was, but I knew about the ditch being open; knew it was a dangerous place.

Q. How long did it continue that way afterwards?

A. Oh, it must have been that way, I would say, a month, anyway; maybe more.

Q. After the accident?

A. Yes, sir. I think it was longer than that before they put on one full length of railroad ties and filled it up. They laid ties down on each side as a wall and then covered it over—put in their gratings and covered it over; put in a full length of ties after this in addition to this old box that laid there exposed.

88 The plaintiff also called as a witness PATRICK DILLON, who testified, among other things, as follows:

Q. Now, you did not see that ditch that day or the same day she was hurt?

A. Yes, sir.

Q. Now, you may state how that ditch was right on the sidewalk as to being open.

A. It was open there; it is all the time. That I know was done to the ditch, as near as I remember, that we extended it and filled that ditch up about seven or eight feet.

Q. When was it, with reference to the time Miss Rush was hurt, that you filled it up—how long after?

A. I could not remember, but it was several days. I could not remember. I have no date for it.

Cross-examination by Mr. CLARK:

Q. The ditch was not cut through the sidewalk?

A. No, sir; we did not cut anything at all; only just cleaned up a little bit and put one section of ties—a tie length in there and covered it up.

Q. And when you say it extended off further toward the station you mean that you covered more of it?

A. Covered it up after we put the ties in.

Q. You say you saw it the day after Miss Rush was hurt and it was in the same condition then that it had been for a long time before that?

A. Yes, sir.

Q. For a great many years?

89 A. For a great many years before that; as far as I remember, ever since the road was built.

Q. How long do you remember that ditch?

A. I have no date for it.

Q. Well, it was a great many years before this accident?

A. Yes, sir.

Q. You are not working for this railroad Co. now?

A. No, sir.

The plaintiff also called as a witness WILLIAM J. WILLIAMS, who testified, among other things, as follows:

Cross-examination:

Q. You have stated that it has been your custom to go back and forth across that place?

A. Once or twice or three times a week.

Q. Did you ever see it in that condition before?

A. Yes, sir.

Q. How often?

A. There was a board—if you will let me relate it—there was a board across it at one time, and it was pretty slippery. I was coming over to see some of my friends, and when I was walking across my foot slipped, and I fell down.

Q. Across this ditch or manhole?

A. No, sir; the ditch.

Q. How long was that before the accident?

A. I don't recollect.

Q. Was it a year?

90 A. Well, I don't know.

Q. Was it two years?

A. I don't know.

Q. You can't tell?

A. Oh, not two years, because I wasn't there only about a year and six months before that.

Q. Then it may have been eighteen months for all you know?

A. It might be; I don't recollect.

Q. But it wasn't in the condition that it was the morning you saw it here, was it?

A. I didn't pay any particular attention; it was too dark; it was in the night when I was passing by then.

Q. And you went on?

A. I went on.

Q. And you didn't pay any attention?

A. I laughed a little at myself—that is, for falling there.

Q. Now, did you see it any time open that way across the sidewalk?

A. Well, I don't remember, of course, particularly about that, but I know it was open because I fell in it, and when I passed by there I noticed it, and I thought it was——

Q. Did you notice a great many times it was open?

A. I don't know how many times.

Q. Well, was it the customary condition that it was open there before this accident?

A. Customary thing?

Q. Yes; was it usually open?

A. It was open then when I fell in it.

Q. I mean was it usually open about the time of this accident. Did you notice it before that for some weeks, perhaps?

91 A. Well, it might be about a month before that that I fell in. I don't know exactly; it was not very long before.

Q. It might have been a month?

A. It might have been a month, I said before.

Q. And did it continue in that condition then up to the time of the accident?

A. I don't know; it might be. I don't know nothing about it between that time.

Q. Did you ever see it closed before the accident?

A. No, sir; I never paid attention to it, anyway. I never seen it.

Q. Then, so far as your knowledge goes, it was in the same condition the day after the accident that it had been for a long time before?

A. For some time, anyway.

Q. Well, for a long time, as long as you had been in Girard?

A. No; I can't tell that.

Q. You never noticed it any other way, did you, Squire?

A. I never noticed it close. I didn't pay much attention to it, and so it might be.

Q. Then, so far as you can say, it was in the same condition the day after Miss Rush was hurt it had been the whole time you had been in Girard?

A. It might be, because I had not been there much, you know.

Redirect examination:

Q. You say you are not able to tell how long it was before you learned Miss Rush was hurt and fell into that ditch?

A. I can't say.

92 Q. It was before, was it?

A. It was before. I know that.

Q. Where were you coming from when you fell in?

A. I was just coming from the depot.

Q. Were you on the sidewalk?

A. No; I was on the bank and one foot down in the ditch.

Q. And when you fell into the ditch where were you?

A. It was when I was coming right from the depot towards the village.

Q. Had you been onto the sidewalk before you went into the ditch?

A. It was right on the ditch I fell.

Q. Whereabouts on the ditch?

A. I fell in it; it was right across the sidewalk, where the sidewalk should be.

Q. Where the sidewalk was before?

A. Yes, sir.

Q. About how deep was the ditch you fell into?

A. I don't know; my foot went clear down. I don't know how long my leg is; it went clear down.

Q. You saw there were some boards across there at that time?

A. There was one board there.

Q. You slipped off that and fell down?

A. Yes, sir.

Q. And the ditch was about in the same condition when you looked at it the next morning after Miss Rush was hurt?
A. I was saying it was about the same.
Q. The same ditch?
A. The same ditch.
93 Q. Why did you stop at Mr. Howser's store?
A. I went in there to buy some meat.
Q. You spoke to him?
A. Yes, sir.
Q. You remember that fact, do you?
A. Yes, sir.

By Mr. CLARK:

Q. The time you fell into the ditch you had been to the Pennsylvania station?
A. Yes; I was coming by there—that is, the path.
Q. You were not coming by the sidewalk; you were coming across the tracks by that angle to the sidewalk?
A. Yes, sir; I was coming right across the tracks. There was no sidewalk there at all. I was just coming to the sidewalk from the railroad and went over that board, whatever it was, and I slipped right in. I was thinking of gaining the sidewalk.
Q. Now, can't you locate the time when that was?
A. No; indeed I can't.
Q. Was it as much as a year before this accident?
A. No, sir; because I didn't move there until 1885, in February, and it was some time—I don't know when; I can't tell.
Q. Some months before, was it?
A. It may be a month of two months or something like that. It might be. I don't know.
Q. And might be longer?
A. Not very much longer, because it was in the summer, anyway.
Q. It may have been in the summer of 1885, then?
A. No, sir; it could not be, because I don't know whether
94 I went down there at all then that summer. I was too busy building a house. I had some business down there the next year.
Q. As near as you could make it, it would be two or three months?
A. It may be a month.
Q. And it may be two months, you say?
A. Well, I can't tell. I don't know.
Q. Well, it was in the same condition it was the night Miss Rush fell?
A. Pretty nearly, as far as I can recollect.
Q. And it was in the same condition as it was all the time you remember the ditch up until that time?
A. Yes, sir.

The plaintiff also called as a witness FREEMAN REAPSUMMER, who testified, among other things, as follows:

Direct examination:

Q. Where do you live?
A. Girard.
Q. How long have you lived there?
A. Well, with the exception of three years I have lived there all my life.
Q. How many years last past consecutively?
A. Four last April.
Q. Were you there in 1886?
A. Yes, sir.
Q. Were you acquainted with Miss Dot Rush?
95 A. Yes, sir.
Q. Did you learn about her getting hurt there in a ditch?
A. I heard of it.
Q. At the time?
A. About the time; yes, sir.
Q. Did you see the place where she was said to have been hurt?
A. I looked at the place where they claimed the was hurt.
Q. How long after they claimed she was hurt did you see it?
A. A few days.
Q. About how many days?
A. Oh, perhaps two or three days.
Q. Had you seen the place before?
A. Yes, sir.
Q. Are you familiar with its location?
A. Pretty much so.
Q. How frequently have you been called on to pass over that place during that year, 1886—the summer of 1886?
A. I could not say how often.
Q. Were you accustomed to pass and repass there?
A. Yes, sir.
Q. That is the main street of the village, I believe?
A. Yes, sir.
Q. And it is a street that lays across the river bridge?
A. Yes, sir.
Q. To the west side?
A. Yes, sir.
Q. They call that the west side?
A. Yes, sir.
96 Q. Had you frequently occasion to go across it?
A. Yes, sir; have gone across a good many times.
Q. About the time Miss Rush was hurt did you see the ditch that was dug there across or near the sidewalk in the street?

Objected to.

By the COURT:

Q. How many days before the injury had you noticed this ditch last?

A. Well, I moved from Portage county there in April, 1886, and I noticed that ditch open there every time I would go by, and I noticed there was a ditch there.

Q. How often would you go by?

A. Oh, perhaps two or three times a week; sometimes every day.

* * * * * * *

Cross-examination:

Q. You found when you went down there, there was a catch-basin, as you call it?

A. Yes, sir.

Q. That was on the right-hand side of the sidewalk as you went down?

A. Yes, sir.

Q. On the left-hand side was a pile of dirt?

A. A pile of dirt.

Q. And the hole was east or south of the pile of dirt, was it?

A. West of the pile of dirt.

Q. Liberty street runs east and west?

A. Yes, sir.

Q. And this manhole was on one side of the sidewalk and
97 the pile of dirt on the other side?

A. Yes, sir.

Q. And the walk was between?

A. The walk was between them. When you got to that pile of dirt you kind of took a little sheer off to the right.

Q. That is, toward the manhole?

A. Yes, sir; right in between the manhole and this pile of dirt.

Q. And that was the condition of things that had been there from the time you went back there; was that in April?

A. It was just along about that time I noticed it; yes, sir.

Q. Then it was in the same condition when you noticed it after the accident to Miss Rush that it was before?

A. Yes, sir.

Q. No change?

A. No change as I could see.

Q. And it continued that way five or six months longer?

A. I could not say how long exactly, but somewheres along there.

98 The plaintiff also called as a witness THEOPHALUS FERGUSON, who testified, among other things, as follows:

* * * * * * *

Q. Did you live on the east side?

A. I lived on the east side.

Q. And passed across there every day?

A. Yes, sir; I crossed the railroad at that point always once a

day. I generally averaged once a day. In going to my work I went down what we called the back way—went down the railroad, and by doing that I didn't have to cross this ditch. I went down to what we call the river bridge. In coming back I always came by the post office, and of course I had to cross the railroad, then, coming from the west side.

Q. Did you cross the ditch in coming that way?

A. Well, the ditch was dug across the sidewalk. Coming from the west side, I generally always turned off the sidewalk before I came to the ditch and bore off to the north and took the straight path. I can cross the railroad and then take the sidewalk.

Q. Before that ditch was dug were people accustomed to pass that place you call a sidewalk—use it as a sidewalk on that street?

A. Yes, sir; that was. It was a sidewalk there before the ditch was dug there. That is where we always crossed.

Q. Do you remember the dirt sidewalk—constructed of what kind of material?

A. Ashes and such like. I don't remember whether there was cinder or not.

99 Q. What material was used for the bed of that street?

A. That was cinder and ashes, too, I think.

Q. Do you mean furnace cinders?

A. Yes, sir.

Q. Before you heard of this accident at all, I understand you to say, you saw that ditch?

A. Yes, sir.

By the COURT:

Q. You passed there once a day, you said?

A. Yes, sir; sometimes twice, and sometimes went over to the post office. I went over for the foundry company.

By Gen. SANDERSON:

Q. Then, suppose Miss Rush was hurt on the 30th of August, 1886, what would you say as to the fact as to whether you had passed over there the day before?

A. Why, I was working at the foundry at that time.

Q. And when you worked there did you pass over it once a day at least?

A. Yes, sir.

Q. Now, then, at the time you remember of observing it immediately before she was hurt, what kind of a ditch was there there?

To which question the defendant objected. The court overruled the objection; to which ruling of the court the defendant excepted.

A. Do you want me to explain the depth or something of that kind?

Q. The depth and everything.

A. I should think the ditch was perhaps three feet wide at the top.

The ashes and such like crumbled down at the sides like, so
100 it was not a square side, and I should think it was two and a half to three feet deep, as near as I can remember.

* * * * * * *

Q. Do you remember about the location of that gutter that came down the street?

A. Yes, sir.

Q. Where did this ditch run with reference to that?

A. This ditch, I believe, was intended as a sewer. The ditch came through under the railroad to connect with this railroad——

Q. Did it connect or come as far as that gutter?

A. I didn't stop to examine; could not say whether it entered into the ditch or runs north or south or not.

By the COURT:

Q. You have given us the dimensions of this ditch. You said it was so wide across the top and so deep. When do you say those dimensions existed as to the time of the accident?

A. Well, at the time I heard of the accident—that is, at the time I remember of going back and forth. I said the dirt lay there for quite a while afterwards.

Q. With reference to that time, when was the ditch as deep as you say it is? Did you give these dimensions with reference to that time, or how long a time before or how long a time after?

A. About that time. I believe the ditch remained about the same as it was until the railroad company fixed it.

Q. You think it was the same for some time before and for some time after?

A. Yes, sir; I think so.

Cross-examination by Mr. CLARK:

Q. How long before the accident was it in that condition?
101 A. Well, I could not tell just how long it was. I remember that the ditch was open quite awhile; that the dirt lay there across the sidewalk.

Q. About how long before the accident—a month?

A. Oh, it may have been three weeks and it may have been six weeks.

Q. You are a cousin of Miss Rush's, ain't you?

A. Yes, sir.

Q. And as you went by it every day from three to six weeks it was in the same condition it was at the same time she was hurt, you think?

A. I say as near as I can recollect. I didn't charge my memory with anything at all of the kind.

Q. That is all you are giving in any of your testimony—as near as you can recollect?

A. Yes, sir.

Q. Now, this ditch was two feet wide and it was about two and a half feet deep, with sloping banks?

A. I said it may have been dug perpendicular at first, but it crumbled off.

Q. Where was this earth piled; on which side of the ditch?

A. It was piled to the east side of the ditch.

Q. Along across the sidewalk?

A. Yes, sir.

* * * * * * *

Q. Now, we are talking about the condition of things before that ditch was opened, before this night Miss Rush was hurt. I ask you how far it was from the manhole out to the end of the covered ditch before it was uncovered that time; how many feet?

102 A. You mean the ditch running east and west?

A. No; the ditch running north and south. I mean the ditch along the railroad.

Q. You mean how far it was from this manhole——

Q. Let us see if we can get it in another way. There was a ditch alongside the railroad running toward the north?

A. Yes, sir.

Q. And when it came to the sidewalk it ran under the sidewalk?

A. Yes, sir.

Q. Now, for some time, a few weeks or few months before Miss Rush was hurt, that ditch was uncovered clear through the sidewalk, two-thirds through the sidewalk?

A. Yes, sir.

* * * * * * *

Redirect examination by Gen. SANDERSON:

Q. How much of the sidewalk was covered to extend over that ditch so that passengers on the sidewalk would move along unobstructed before any work was done?

A. That is, this last time?

Q. Before any work was done previous to the injury of Miss Rush.

A. Well, there was, I should think, about five or six feet covered of the ditch covered over—made the sidewalk across the ditch so people could walk back and forth.

Q. Five or six feet of the sidewalk was covered?

A. Yes, sir.

Q. How much of the ditch was uncovered before you got to the extreme edge of the sidewalk towards the depot, whether any part of the sidewalk was uncovered and unprotected?

A. That is, of the sidewalk crossing this ditch?

103 Q. Yes.

A. There was about two-thirds of the sidewalk—as I said, there was about two-thirds of it dug away, and there was no sidewalk there at all. There was no sidewalk across this ditch at that time.

Q. At the time of the injury?

A. Yes, sir.

Q. Now, how long before this injury had that ditch been open?

A. Well, it may have been five weeks.

Q. Now, before that five weeks, before any work was done looking to opening that ditch, how much of the sidewalk was covered and unobstructed?

A. The entire sidewalk, as far as I can remember.

Q. How wide is it there?

A. Oh, I should think it was six feet, or something like that; six or seven feet.

By Mr. CLARK:

Q. Then for five or six weeks before the accident it was in the condition in which you observed it at the time of the accident?

A. So far as I remember.

104 And the defendant called EDWARD O'NEIL, who testified as follows:

Q. How long before the accident to plaintiff had the ditch been or was it ever open?

A. Yes, sir; it was open.

Q. Who opened it?

A. Well, I opened it; me and my men; at my orders it was opened.

Q. You may state how long it remained open.

A. Well, it remained open that day between the opening and closing of it that day. We worked at it all day between the opening and closing of it.

Q. Was it opened and closed upon the same day?

A. Yes, sir.

Q. And before dark?

A. Yes, sir.

Q. About how many years ago was it you dug that ditch across the sidewalk?

A. That I could not tell, because I don't remember the date of the year or month.

Q. Do you think that it was about four years ago?

A. It must be something about that.

Q. Do you think it was about four years ago last August?

A. Probably.

Q. Do you know anything about it?

A. I don't; only what I say.

Q. Did you ever dig a ditch across the sidewalk?

A. I did, sir.

Q. But you can't remember within two or three years of the time?

105 A. Oh, yes; I could remember within that, but I could not give the date of the year or month.

Q. Nobody asked you to give the date of the year, but give us the year that you dug the ditch across the sidewalk.

A. I could not give it to you.

Q. Could you give it within two years; what have you to say?

A. I have nothing to say. I told you I kept no record.

Q. You then know nothing about it?
A. If it had been in a year from this, then I could tell you.
Q. Then for five or six weeks before the accident it was in the condition in which you observed it at the time of the accident?
A. As far as I remember.

And the defendant called several witnesses who testified that they passed along the sidewalk on the south side of Liberty street daily about the time the accident to plaintiff is claimed to have occurred, and that they did not notice that the ditch along the side of the railroad track was open into or through the sidewalk.

And this was all the evidence admitted upon the trial of this case tending to show the time when the ditch into which the plaintiff fell and was injured was opened, and was also all the evidence admitted upon the trial of the case tending to show the length of time that the ditch into which the plaintiff fell had continued open through or into the sidewalk prior to the night on which the accident to the plaintiff occurred.

And the evidence was admitted tending to prove all the issues on their part to be maintained under the pleadings, and also offered evidence tending to prove that it was the custom
106 and practice for a long time prior to the accident to the plaintiff complained of, for a large proportion of the persons going to and from the passenger station of the Pennsylvania Company at Girard, to follow what was described by the witnesses as a diagonal path leading from said Pennsylvania passenger station across lands of the Pennsylvania Company and the defendant companies to Liberty street, and reaching the sidewalk on the south side of that street near where the track of the defendant companies crossed that sidewalk, but no authority was shown for such use of said lands, but only the custom; but it was shown that defendant had knowledge of such use and made no objection.

And evidence was submitted showing that there were no fences whatever between said passenger station of the Pennsylvania Company and Liberty street at the point where same was crossed by the tracks of the defendant companies, and also evidence tending to show that the plaintiff on the night when the accident to her occurred, instead of passing from the platform of the Pennsylvania station to the sidewalk on the south side of Liberty street, took the diagonal path above described in this bill of exceptions, and there was evidence admitted tending to show that the open ditch along the east side of the railroad track was not open into or across the sidewalk where the plaintiff claimed she was injured on the night of the accident complained of, but was covered across the entire width of the same.

And evidence offered by the defendant was admitted tending to prove that the same condition of thing- with respect to said
107 diagonal path leading from the Pennsylvania station to Liberty street and that the same condition of things with respect to the ditch along the easterly side of defendants' tracks existed on

the night of the accident as had existed for a long time prior thereto.

And all the evidence of all the parties to the cause having been introduced the defendants, by their counsel, before argument requested the court to give in its charge to the jury each of the following propositions of law separately and not as a series:

III.

If you find from the evidence that the plaintiff fell into the railroad ditch to the south of the line of the street she cannot recover in this case, and your verdict should be for the defendant.

Which the court refused. Defendant excepts.

The court declined said request III, above given, because it was covered by the charge as given, wherein the jury were distinctly instructed that they must find from the evidence that the plaintiff was injured by falling into a ditch which was opened across the public sidewalk on Liberty street, as charged in the petition, to entitle her to recover, which portions of the charge were as follows, viz: "The plaintiff has set forth the injuries she received in her petition and has declared in it the manner in which such injuries were sustained. She must stand or fall by the allegations therein set forth. It is therefore important to ascertain what negligence she alleges against the defendant company in her petition. She alleges that

on the 30th day of August, 1886, the defendant, &c., &c., &c.,
108 (here was given in full the allegations of the petition on this subject). "In this petition the plaintiff has substantially charged that the negligence of the defendant consisted in digging and keeping open the ditch across the sidewalk of Liberty street. She avers that, while walking along said sidewalk, without any negligence on her part, she fell into this ditch, so negligently opened and maintained by the defendant across the sidewalk as before stated" * * * The issue therefore presented, gentlemen of the jury, is whether the defendant railroad company carelessly opened and allowed to remain open this ditch across the sidewalk in the village of Girard. * * * "If you shall find from the evidence in this case that the plaintiff was injured by falling into this ditch or trench in question; that she fell into the same at some point where it crossed the public sidewalk, as I have before explained; that she at the time was exercising ordinary care, then it will be the duty of the jury to return a verdict for the plaintiff. The burden of proof is on the plaintiff to show, not only that the ditch was open in the sidewalk at the time it is claimed the accident to the plaintiff occurred, and that, having due regard to the frequency with which the plaintiff visited that locality, she did not know or by the exercise of ordinary prudence could not have known that it was open, and, while in the exercise of proper care, she fell into the same," &c., &c. Having so charged, the court held it unnecessary to charge further as requested in III, and therefore declined.

VII.

If you shall find from the evidence introduced in this case
109 that the defendant The New York, Lake Erie and Western Railway Company opened a ditch through the sidewalk at the place where it is claimed the accident to the plaintiff occurred, and that the plaintiff passed along the sidewalk, fell into it, and was injured, as claimed in the petition in this case, yet the court says to you that the plaintiff cannot in this case recover as against said The New York, Lake Erie and Western Railroad Company, and that you should return a verdict in favor of the defendant.

Which the court refused. Defendant excepts.

IX.

If you shall find from the evidence introduced in this case that the plaintiff, in returning from the Pennsylvania Railroad station, did not go to the north end of the station platform, then to the sidewalk on the south side of Liberty street, and thence along the sidewalk, until she fell into the railroad ditch, but that, in returning from the Pennsylvania station, she undertook to follow what has been described as a diagonal path leading from that station to Liberty street and reaching the sidewalk somewhere near where the track of the defendant companies crosses the sidewalk, and that in the darkness she strayed from the path and fell into the open ditch, to the south of the south line of Liberty street, then the court says to you that the plaintiff cannot recover in this case, and your verdict should be in favor of the defendants.

Which the court refused as above stated, but did charge on this point as hereinafter given. Defendant excepts.

110 X.

The court says to you as a matter of law that upon the evidence introduced in this case the plaintiff is not entitled to recover, and that you should return a verdict in favor of the defendants.

Which the court refused. Defendant excepts.

And the arguments of counsel being completed, the court charged the jury as follows:

Charge of the Court.

Among other things not excepted to, the court charged as follows:

Testimony was offered tending to show that many people in coming from the Pennsylvania Railroad depot to Liberty street took a pathway diagonally across the several tracks of the Pennsylvania railroad and the defendant's railroad, and that this pathway would lead them to the southerly sidewalk of Liberty street at and near where this accident happened. It is contended by the defendant that the testimony shows that the plaintiff used this pathway in coming from the Pennsylvania depot to Liberty street, and that

she fell into this ditch at a point on its right of way and entirely off and away from the sidewalk. The plaintiff insists that even if the plaintiff had taken such pathway, and thereby approached Liberty street, and fell into this ditch at a point along said pathway and on defendant's right of way, in that case the defendant would still be liable; but the court instructs you, gentlemen of
111 the jury, that the defendant railroad company had a right to maintain a ditch suitably constructed for the purpose of draining its roadway, and had a right to construct said ditch along its right of way up to the sidewalk used by it and the public on Liberty street, provided it was not built or maintained in a way to be dangerous to persons. If persons who used this pathway of their own choice and for their own convenience well knew of the existance of this ditch and of its proximity to the sidewalk, and so knowing its character and location voluntarily chose to follow this pathway over the railroad grounds and continue in its use after knowing of the location of said ditch, and thereby fell into the ditch at a point away from the sidewalk used by the public, and at a point not dangerous to persons using the usual public walk, and thereby receive injuries, the defendant company would not be liable. But the court instructs you further, gentlemen, that upon the pleadings as framed by the parties the plaintiff has not claimed or averred that the injuries she received were the result of falling into this ditch above referred to at a point off from the sidewalk (to the south of it) as commonly used by the public. She has not made any such case in her petition. As before stated, the negligence of which she complains is the opening and keeping open of this ditch across the sidewalk on or about the 30th day of August, 1886.

And the foregoing is all that was said by the court in the charge to the jury relative to the rules of law governing the case, if the jury should find that the plaintiff while passing from the
112 Pennsylvania station to Liberty street by the diagonal path referred to fell into the ditch by the side of defendant's railroad track, but to the south of Liberty street, and was thereby injured, except as hereinbefore quoted from the charge, when stating reason for declining to give the third request. The court having specially instructed the jury that the issue before them was as to whether or not the plaintiff was injured by falling into a ditch negligently opened by defendant across the sidewalk as alleged, it declined to charge as to the law applicable in case plaintiff fell into a ditch elsewhere.

And the court further charged the jury as follows, viz:

The defendant had the legal right to extend its ditch, excavated for drainage purposes, across said sidewalk or street or any part of it if it became necessary for the proper use and protection of its road-bed to do so, but in so extending it the defendant was bound to exercise ordinary care to prevent injury to persons using said sidewalk or street for public travel. If it became necessary in extending said ditch to keep the same open and thereby temporarily obstruct travel it was bound to protect said ditch so exposed and, by some suitable guard or barrier or notice, to prevent persons law-

fully using such walk or street from falling into said ditch or being in any way injured thereby. In the exercise of this right to extend its ditch the defendant was bound to do it with ordinary care and diligence. Ordinary care is such care as a prudent and cautious man would exercise under similar circumstances.

To which definition of ordinary care by the court the defendant below excepted.

113 And the court further charged the jury as follows, viz:

The court says to you that even if you shall find from the evidence before you that the ditch or excavation into which plaintiff claims that she fell extended in whole or in part across the sidewalk, yet, if you shall also find that such ditch or excavation was upon the night of the 30th of August, 1886, in substantially the same condition and situation with relation to the sidewalk that it had been in for a considerable length of time prior to that date, and that plaintiff knew of the situation and condition of the ditch or by the exercise of ordinary care and observation on her part should have known it, then the court says to you that the plaintiff ought not to recover in this action, and your verdict should be in favor of the defendant; and in considering the question as to whether the plaintiff did know of the condition and location of this alleged ditch or excavation or by the exercise of ordinary care and observation might have known it, you should take into consideration the frequency with which she was in the habit of visiting that locality as testified to by the plaintiff herself.

And thereupon the defendant The New York, Lake Erie & Western Railroad Company presented this its bill of exceptions and prays that the same be allowed, signed, sealed, and made a part of the record, which is accordingly done this 31 day of January, A. D. 1891.

AUGUSTUS J. RICKS, [SEAL.]
District Judge, Sitting in Circuit Court, &c.

It is agreed by the undersigned counsel that when the bill of exceptions is settled in this case that it may be signed by the court and filed as of January 31, 1891.

SANDERSON & NORRIS,
Att'ys for Plaintiff.
HINE & CLARK.

Filed January 31, 1891.

MARTIN W. SANDERS, *Clerk,*
By O. C. BEATTY, *Deputy Clerk.*

114 And afterwards, to wit, on the 28th day of May, A. D. 1891, a remitter was filed in this cause, which is in the words and figures following, to wit:

Circuit Court of the United States, Northern District of Ohio, Eastern Division.

LAURA F. RUSH
vs.
THE NEW YORK, LAKE ERIE AND WESTERN RAILROAD COMPANY *et als.* } Consent for Remitter.

The plaintiff hereby consents to remit forty-nine hundred dollars from the verdict of the jury returned in this case, and accepts a judgment for fifty-one hundred dollars.

LAURA F. RUSH,
By SANDERSON & NORRIS,
Her Attorneys.

May 27th, 1891.

115 And afterwards, to wit, on Thursday, May 28th, 1891, a judgment was entered in said cause; which judgment is in the words and figures following, to wit:

LAURA F. RUSH
vs.
THE NEW YORK, LAKE ERIE AND WESTERN RAILROAD COMPANY *et al.* } Law. No. 4763.

This day came the parties, by their counsel, and came on to be heard the defendants' motion to set aside the verdict of the jury and for a new trial herein, and the same was argued by counsel, and, it appearing to the court that the plaintiff has filed in this case a written agreement to remit the sum of forty-nine hundred dollars from the amount of said verdict, it is thereupon ordered that the said motion be, and it is hereby, overruled.

It is therefore considered that the plaintiff, Laura F. Rush, have and recover from the defendant The New York, Lake Erie and Western Railroad Company the sum of fifty-two hundred and fifty-three dollars (being the amount of said verdict, less forty-nine hundred dollars, and interest from the seventh day of October to the first day of this term), together with interest on said sum of fifty-two hundred and fifty-three dollars from the 7th day of April, 1891, and also that she recover from said defendant her costs in this suit expended, taxed at the sum of $—. It is further ordered that defendant pay its own costs, for all of which costs execution may issue; to which action of the court the defendant then and there excepted.

116 Know all men by these presents that we, The New York, Lake Erie and Western Railroad Company, as principal, and John Tod, as surety, are held and firmly bound unto Laura F. Rush in the full and just sum of eleven thousand seven hundred & fifty dollars, to be paid to the said Laura F. Rush, her certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 11th day of June, in the year of our Lord one thousand eight hundred and ninety-one.

Whereas lately, at the April term, A. D. 1891, of the circuit court of the United States for the northern district of Ohio, viz., on the 28th day of May, in a suit depending in said court between Laura F. Rush and The New York, Lake Erie and Western Railroad Company and others, a judgment was rendered against the said The New York, Lake Erie and Western Railroad Company for five thousand two hundred and fifty-three dollars, interest and costs of suit, and the said The New York, Lake Erie and Western Railroad Company having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Laura F. Rush, citing and admonishing her to be and appear at a Supreme Court of the United States, at Washington, on the eleventh day of July next:

Now, the condition of the above obligation is such that if the said The New York, Lake Erie and Western Railroad Company shall prosecute its writ of error to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

THE NEW YORK, LAKE ERIE AND WESTERN RAILROAD COMPANY, [SEAL.]
By A. M. TUCKER, *Gen'l Man'g'r.* [SEAL.]
JOHN TOD. [SEAL.]

Sealed and delivered in presence of—
JNO. D. CUTTER,
As to A. M. Tucker.
J. T. FRAWLEY,
As to John Tod.

Approved by—
AUGUSTUS J. RICKS,
U. S. Dist. Judge, &c.

117 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the northern district of Ohio, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between Laura F. Rush, as plaintiff, and The New York, Lake Erie & Western Railroad Company, as defendant, a manifest error hath happened, to the great damage of the said The New York, Lake Erie and Western Railroad Company, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly

and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 11th day of July next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 11th day of June, in the year of our Lord one thousand eight hundred and ninety-one.

Seal of the Circuit Court, Northern Dist. of Ohio.

IRVIN BELFORD,
Clerk of the Circuit Court of the United States for the Northern District of Ohio.

Allowed by—
——.

118 UNITED STATES OF AMERICA, *ss:*

The President of the United States to Laura F. Rush, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the 11th day of July next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Ohio, wherein The New York, Lake Erie & Western Railroad Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Augustus J. Ricks, district judge and one of the judges of the circuit court of the United States, this eleventh day of June, in the year of our Lord one thousand eight hundred and ninety-one.

AUGUSTUS J. RICKS,
U. S. Dist. Judge, Sitting in Circuit Court.

Filed Jun- 27, 1891.

IRVIN BELFORD,
Clerk U. S. Circuit Court.

[Endorsed:] June 12, '91. Mooney.

NORTHERN DISTRICT OF OHIO, *ss:*

On this 12th day of June, in the year of our Lord one thousand eight hundred and ninety-one, I delivered a true copy of the within citation to M. A. Norris, of the firm of Sanderson and Norris, counsel of record in this cause.

B. F. WADE, *U. S. Marshal,*
By JAMES MOONEY, *Deputy.*

Service	2 00
Copy	50
Travel, 68 miles	4 08
	$6 58

119 And afterwards, to wit, on the 16th day of June, A. D. 1891, an assignment of errors was filed in said cause, which is in the words and figures following, to wit:

In U. S. Circuit Court, Northern District of Ohio, Eastern Division.

LAURA F. RUSH
vs.
THE NEW YORK, PENNSYLVANIA AND OHIO RAILROAD COMPANY *et al.* } Assignment of Errors.

The New York, Lake Erie and Western Railroad Company files this its assignment of errors shown by the record to have occurred to its prejudice in said court in said cause, to wit:

1. Said court erred in overruling the motion of the New York, Lake Erie and Western Railroad Company that this cause be dismissed as to it.

2. In refusing to charge the jury as requested in request numbered III.

3. In refusing to charge the jury as requested in request numbered VII.

4. In refusing to charge the jury as requested in request numbered IX.

5. In refusing to charge the jury as requested in request numbered X.

6. In its charge to the jury on what constitutes ordinary care.

7. In overruling the objection to the following questions put to witness Theophalus Ferguson and permitting said question to be put and answered: "Now, then, at the time you remember of
120 observing it, immediately before she was hurt, what kind of a ditch was there there?"

THE NEW YORK, LAKE ERIE & WESTERN R. R. CO.,
By HINE & CLARKE, *Its Att'ys.*

121 UNITED STATES OF AMERICA, }
Northern District of Ohio, Eastern Division. }

I, Irvin Belford, clerk of the circuit court of the United States for said district, do hereby certify the above and foregoing to be a true, correct, and complete transcript of the record of all the proceedings had in said court in the case wherein Laura F. Rush is plaintiff and The New York, Lake Erie and Western Railroad Company *et al.* are defendants as the same appears from the files and records of said court now remaining in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Cleveland, in said district, this 29th day of June, A. D. 1891, and in the 115th year of the Independence of the United States of America.

Seal of the Circuit Court, Northern Dist. of Ohio.

IRVIN BELFORD, *Clerk.*

Endorsed on cover: Case No. 14,712. N. Ohio C. C. U. S. No. 207. The New York, Lake Erie & Western Railroad Company, plaintiff in error, *vs.* Laura F. Rush. Filed July 1, 1891.